URANIUM ENRICHMENT AND MILL TAILINGS RECLAMATION LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

AUGUST 10, 1988

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CONTENTS

Page

Press release of Monday, July 25, 1988, announcing the hearing 2
Background material prepared by the Joint Committee on Taxation 4

WITNESSES

U.S. Department of Energy, Hon. Theodore J. Garrish, Assistant Secretary for Nuclear Energy 32
U.S. Department of the Treasury, Dana Trier, Tax Legislative Counsel 41
Office of the U.S. Trade Representative, Judith Hippler Bello, General Counsel 41

American Nuclear Energy Council, William S. Lee and Loring E. Mills 72
Cheney, Hon. Dick, a Representative in Congress from the State of Wyoming 19
Duke Power Co., William S. Lee 72
Edison Electric Institute, William S. Lee and Loring E. Mills 72
Energy Fuels Nuclear, Inc., Gerald W. Grandey 80
Grandey, Gerald W., Uranium Producers of America, and Energy Fuels Nuclear, Inc 80
Havasupai Tribe of Arizona, Delmer Uqualla 112
Lee, William S., Duke Power Co., Edison Electric Institute, and American Nuclear Energy Council 72
Mills, Loring E., Edison Electric Institute and American Nuclear Energy Council 72
Montange, Charles H., National Taxpayers Union 94
National Taxpayers Union, Charles H. Montange 94
Richardson, Hon. Bill, a Representative in Congress from the State of New Mexico 23
Uqualla, Delmer, Havasupai Tribe of Arizona 112
Uranium Producers of America, Gerald W. Grandey 80

SUBMISSION FOR THE RECORD

Atlas Corp., Edward R. Farley, Jr., statement 105

URANIUM ENRICHMENT AND MILL TAILINGS RECLAMATION LEGISLATION

WEDNESDAY, AUGUST 10, 1988

House of Representatives,
Committee on Ways and Means,
Washington, DC.

The committee met, pursuant to notice, at 9:40 a.m. in room 1100, Longworth House Office Building, Hon. Dan Rostenkowski (chairman of the committee) presiding.

[The press release announcing the hearing and background material follow:]

FOR IMMEDIATE RELEASE
MONDAY, JULY 25, 1988

PRESS RELEASE #27
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-1721

THE HONORABLE DAN ROSTENKOWSKI (D., ILL.), CHAIRMAN, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES A HEARING ON URANIUM ENRICHMENT AND MILL TAILINGS RECLAMATION LEGISLATION

The Honorable Dan Rostenkowski (D., Ill.), Chairman, Committee on Ways and Means, U.S. House of Representatives, today announced a public hearing on several bills relating to the viability of the U.S. uranium industry and the clean up of uranium mill tailings. These bills include H.R. 4489 (Mr. Richardson, et al), H.R. 4975 (Mr. Nielson, et al), and H.R. 4934 (Mr. Richardson and Mr. Hubbard). (H.R. 4489 is identical to S. 2097, which passed the Senate on March 30, 1988.) The hearing will be held on Wednesday, August 10, 1988, beginning at 9:30 a.m., in room 1100 Longworth House Office Building.

In announcing this hearing, Chairman Rostenkowski stated: "Advocates of these legislative proposals contend that such legislation is necessary both to ensure the domestic uranium industry's long-term viability, and to reclaim mill tailings. The Committee will want to examine the basis for these claims as well as the mechanisms provided in the bills to accomplish the stated purposes."

DETAILS FOR SUBMISSION TO BE HEARD:

Individuals and organizations interested in presenting oral testimony before the Committee must submit their request to be heard in writing no later than Wednesday, August 3, 1988, to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. As soon as possible after the filing deadline, the Committee staff will notify by telephone those scheduled to appear. Any questions concerning a scheduled appearance should be directed to the Committee staff [(202) 225-1721].

It is urged that persons and organizations having a common position make every effort to designate one spokesperson to represent them in order for the Committee to hear as many points of view as possible. Time for oral presentations will be strictly limited with the understanding that a more detailed statement may be included in the printed record of the hearing. (See formatting requirements below.) This process will afford more time for Members to question witnesses. In addition, witnesses may be grouped as panelists with strict time limitations for each panelist.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, all witnesses scheduled to appear before the Committee are required to submit 200 copies of their prepared statements to the Committee office, room 1102 Longworth House Office Building, at least 24 hours in advance of their scheduled appearance. Failure to comply with this requirement may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Persons submitting written statements for the printed record of the hearing should submit at least six (6) copies by the close of business, Friday, August 12, 1988, to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements for the record of the printed hearing wish to have their statements distributed to the press and the interested public, they may provide 100 additional copies for this purpose to the Committee office, room 1102 Longworth House Office Building, before the hearing begins.

(MORE)

FORMATTING REQUIREMENTS:

COMMITTEE ON WAYS AND MEANS FORMATTING REQUIREMENTS FOR PRINTING OF HEARING STATEMENTS, WRITTEN COMMENTS AND EXHIBITS

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and public during the course of a public hearing, may be submitted in other forms.

DESCRIPTION OF BILLS
(H.R. 4489, H.R. 4934, AND H.R. 4975)
RELATING TO PROMOTION OF DOMESTIC URANIUM MINING AND FINANCING OF URANIUM ENRICHMENT AND MILL TAILINGS RECLAMATION

Scheduled for a Hearing

Before the

COMMITTEE ON WAYS AND MEANS

on August 10, 1988

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

August 5, 1988

JCX-23-88

INTRODUCTION

The House Committee on Ways and Means has scheduled a public hearing on August 10, 1988, on bills relating to promotion of domestic uranium mining and financing of uranium enrichment and uranium mill tailing reclamation. These bills include H.R. 4489 (Mr. Richardson, et. al.), H.R. 4934 (Mr. Richardson and Mr. Hubbard), and H.R. 4975 (Mr. Nielson, et. al.).[1] H.R. 4489, other than Title I thereof (uranium revitalization), is identical to S. 2097, which was passed by the Senate on March 30, 1988.[2] H.R. 4934 and H.R. 4975 are virtually identical.

These bills would establish a Federal fund to assist in financing of reclamation and other remedial action at currently active uranium and thorium processing sites, and would establish a wholly owned government corporation to operate the Federal uranium enrichment program as a continuing, commercial enterprise. In addition, these bills would promote the domestic uranium mining industry either by imposing a charge on foreign uranium contained in nuclear reactor fuel assemblies or by authorizing funds for the purchase of domestic uranium by the Federal Government.

This document,[3] prepared by the staff of the Joint Committee on Taxation, provides background and a summary description of the bills and related issues before the Committee on Ways and Means.

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[1] These bills have been referred jointly to the House Committees on Energy and Commerce; Interior and Insular Affairs; Science, Space, and Technology; and Ways and Means. The Energy and Commerce Subcommittee on Energy and Power held a hearing on H.R. 4489, H.R. 4934, and H.R. 4975, on July 28, 1988, and has another hearing scheduled on August 10, 1988. The Interior and Insular Affairs Subcommittee on Energy and the Environment held a hearing on H.R. 4489 on June 28, 1988.

[2] S. 2097 was reported by the Senate Committee on Energy and Natural Resources on February 25, 1988 (without written report). A predecessor bill (S. 1846) was reported by the Senate Committee on Energy and Commerce on November 4, 1987 (S. Rept. 100-214). S. 1846 included related provisions from S. 1084 and S. 1100.

[3] This document may be cited as follows: Description of Bills (H.R. 4489, H.R. 4934, and H.R. 4975) Relating to Promotion of Domestic Uranium Mining and Financing of Uranium Enrichment and Mill Tailings Reclamation (JCX-23-88), August 5, 1988.

I. SUMMARY

H.R. 4489, H.R. 4934, and H.R. 4975 would (1) promote the domestic uranium mining industry, (2) subsidize the cleanup of mine tailings at active mine sites, and (3) create a 100-percent federally owned United States Enrichment Corporation which would assume certain uranium enrichment activities of the Department of Energy.

Promotion of domestic uranium mining industry

H.R. 4489 would assess a mandatory charge on utilities with nuclear power plants, collected by the Secretary of Energy, based on the percentage of foreign uranium contained in new fuel assemblies loaded during a calendar year. In effect, this charge would operate as a tariff on foreign uranium.

H.R. 4934 and H.R. 4975 would require the Federal Government to purchase $750 million of domestic uranium.

Cleanup of uranium mill tailings

Each of these bills would establish a fund in the Treasury which would be used to subsidize up to two-thirds of the cost or reclamation, decommissioning, and other remedial action with respect to mill tailings accumulated as of the date of enactment at active mine sites. Reclamation of mill tailings produced after the date of enactment would not be covered.

The fund would be financed by (1) contributions from participating owners of active mine sites (all such contributions would be refundable with interest); (2) contributions voluntarily made by States containing active sites; (3) amounts from general revenues (or the U.S. Enrichment Corporation); and (4) a mandatory fee per kilogram of uranium contained in fuel assemblies initially loaded into civilian nuclear reactors.

Uranium enrichment

Each of the bills would establish a wholly owned government corporation known as the United States Enrichment Corporation. This Corporation would would assume certain uranium enrichment activities currently conducted by the Department of Energy.

II. BACKGROUND AND PRESENT LAW

Uranium mining and enrichment

Uranium ore has insufficient amounts of U_{235} to be useful to commercial or military nuclear reactors. To create nuclear fuel, the uranium must be enriched. At present enriched uranium used by noncommunist countries comes from four sources: the U.S. Department of Energy ("DOE"); Eurodif (a consortium established by the French, Italian, Spanish and Belgian governments); Eurenco (a consortium established by the British, Dutch, and West German governments); and the Soviet Union. No private firms enrich uranium.

Congress makes annual appropriations to DOE to fund construction, operation, and research activities related to uranium enrichment. DOE has enrichment facilities in Oak Ridge, Tennessee; Paducah, Kentucky; and Portsmouth, Ohio. These facilities only enrich uranium for commercial and military nuclear reactors. DOE operates separate facilities to produce weapons grade plutonium. The facility in Oak Ridge currently is out of production due to insufficient demand, and is in the process of being decommissioned. Construction was begun on a gas centrifuge enrichment plant next to the existing plant in Portsmouth, but it was never completed.

Prior to the 1950s, the United States imported most of its uranium ore from abroad. To spur domestic mining, the Atomic Energy Commission ("AEC") instituted a program of purchase and price guarantees and bonuses. In 1967, the AEC stopped buying foreign uranium. In 1970, having built a stockpile, the AEC stopped buying uranium altogether. The Atomic Energy Act permits DOE to impose import restrictions if they are necessary to ensure the viability of the domestic uranium industry. The Atomic Energy Act does not specifically permit charges on foreign uranium.

Prior to 1964, all enriched nuclear material in the United States was owned by the Federal government. In 1964, the Congress amended the Atomic Energy Act to permit private ownership of enriched uranium for foreign and domestic utilities. DOE enriches foreign uranium for both domestic and foreign utilities. DOE currently produces approximately 50 percent of the enriched uranium used by noncommunist countries.

Uranium mill tailings

Uranium mill tailings are the wastes remaining after uranium has been extracted from uranium ore. Mill tailings contain low concentrations of naturally occurring radioactive materials and emit radon gas.

In 1978, the Congress enacted the Uranium Mill Tailings Radiation Control Act. That law requires that the mill tailings at 24 designated inactive sites[4] be cleaned up by DOE with the Federal government paying 90 percent of the cost and the State where the site is located paying the remainder.

Present law makes the cleanup of active sites the responsibility of the site owner. The Nuclear Regulatory Commission and the Environmental Protective Agency are to establish regulations to provide for the reclamation of these sites. Posting of a bond to ensure that the operator will have adequate resources to clean up the site is a requirement to obtain an operator's license.[5]

Tax rules.--Under special tax rules (Code secs. 468 and 468A) certain costs of coal mine and waste disposal site reclamation and nuclear power plant decommissioning may be deducted prior to the time that the reclamation or decommissioning work is performed. These provisions are an exception to the general rule which prohibits the accrual of an expense prior to the time economic performance occurs (Code sec. 461(h)).

Importation of uranium

Under Article 21 of the General Agreement on Tariffs and Trade ("GATT"), a contracting party may restrict imports of fissionable materials "... which it considers necessary for the protection of its essential security interests."

Section 232 of the Trade Expansion Act of 1962 provides relief where imports are found to threaten national security.

Under section 161(v) of the Atomic Energy Act, added in 1964, the Federal government is prohibited from enriching foreign uranium for domestic use if such importation would threaten the viability of the domestic uranium mining industry. Between 1966 and 1983 enrichment of foreign uranium for domestic use was completely or partially restricted pursuant to section 161(v).

Section 170B of the Atomic Energy Act requires the Secretary of Energy to report to the Congress and the President, for years 1983 to 1992, a determination of the viability of the domestic uranium industry and whether imported uranium is a threat to the domestic industry. If the Secretary determines that imported uranium threatens the viability of the domestic industry, the U.S. Trade Representative is required to request that the U.S. International Trade Commission initiate an investigation under section 201 of the Trade Act of 1974. Section 201 is intended to provide temporary relief to domestic industries seriously injured by increased imports.

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[4] These sites were defined in the Act and were no longer producing uranium at the time of enactment.

[5] In 1981, in an amendment to the national security and military applications provisions of the Nuclear Energy Authorization Act, Congress expressed an interest in assisting in the reclamation of active sites.

At the request of the Secretary of Energy on September 26, 1985, the U.S. Trade Representative examined whether an investigation under section 201 should be initiated. The Trade Representative, on December 26, 1985, recommended against initiation of a section 201 investigation for three reasons: (1) the uranium industry's problems appear to be primarily a result of reduced demand rather than imports; (2) the industry's problems are long term because of the comparative advantage of Canadian and Australian producers with higher quality ore; and (3) short-term import relief would be inadequate to restore the viability of the domestic industry. The U.S. Trade Representative also noted that uranium for military uses is not at issue, and that the principal source of imports is Canada, an immediate neighbor and longtime stable ally.

U.S.-Canada Free-Trade Agreement.--The United States-Canada Free-Trade Agreement Implementation Act of 1988, H.R. 5090, was introduced by Mr. Foley on July 26, 1988 and referred to 8 committees including Ways and Means. All 8 committees have reported the bill. Section 305(b) of the Agreement would amend section 161(v) of the Atomic Energy Act to exempt Canada from any restriction on the enrichment of foreign uranium for domestic use. Imposition of a tariff or similar charge on Canadian uranium apparently would be in violation of this proposed agreement.

III. DESCRIPTION OF BILLS

A. H.R. 4489 (Mr. Richardson, et. al.)

Revitalization of U.S. uranium industry

For calendar years 1988 through 1994, H.R. 4489 generally would require any licensee of a civilian nuclear power reactor to pay charges of $200 to $500 per kilogram of foreign uranium that exceeds 37.5 percent of the weight of the uranium used in new fuel assemblies loaded during the calendar year. For calendar years 1995 through 2000, the schedule of charges would apply to foreign uranium that exceeds 50 percent of the weight of the uranium used in new fuel assemblies loaded during the calendar year. Such charges would be assessed and collected by the Secretary of Energy. Any charges collected by the Secretary of Energy would be deposited in the general fund of the Treasury.

H.R. 4489 would restrict most Federal purchases of uranium to domestic sources, except that this restriction would not apply to the Tennessee Valley Authority. In addition, H.R. 4489 would restrict the use of existing U.S. uranium inventory.

Remedial action for uranium and thorium mill tailings

H.R. 4489 would establish a Uranium Mill Tailings Fund ("Tailings Fund") as a separate fund within the Treasury. Amounts in the Tailings Fund would consist of: (1) contributions from owners or licensees of active sites who elect to participate in reclamation, decommissioning, and other remedial action through the Tailings Fund; (2) a contribution of $300 million by the Federal Government; (3) mandatory fees imposed on licensees of civilian nuclear power reactors for the years 1989 through 1993; and (4) interest earned on sums in the Tailings Fund. The Tailings Fund may also receive contributions from States in which active sites are located, but such State contributions are not mandatory.

The Secretary of Energy would disburse available amounts from the Tailings Fund as partial reimbursement to electing owners or licensees of certain active sites for the costs of remedial action associated with existing mill tailings at those sites.[6] The Tailings Fund would be used to reimburse owners or licensees for the costs of remedial action up to $4.50 per ton of mill tailings, as adjusted for inflation. Contributions to the Tailings Fund made by an electing owner or licensee of an active site, plus interest thereon, would be applied either toward the reimbursement of such owner or licensee for the cost of reclamation, decommissioning, and other remedial action at such site, or would be refunded to the owner or licensee.[7] Owners or licensees of active sites would not be entitled to any reimbursement for the costs of remedial action associated with mill tailings generated after the date of enactment.

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[6] The term "tailings" refers to wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Thorium mill tailings.--The bill would authorize Federal expenditures for cleanup of thorium mill tailings at sites involving sales to the Federal Government. The authorization is limited to such sums as are necessary to pay for cleanup of tailings arising from the production of thorium for the Federal Government.

Establishment of United States Enrichment Corporation

The bill would establish the United States Enrichment Corporation (the "Corporation") as a wholly owned government corporation. The Department of Energy would transfer existing uranium enrichment facilities, assets and liabilities to the Corporation.[8] The Corporation would operate facilities for uranium enrichment on a commercial basis, and market and sell enriched uranium and related services.

The management of the Corporation would be vested in an Administrator, appointed by the President for a six-year term, by and with the advice and consent of the Senate. An Advisory Board consisting of five members would review the Corporation's policies and performance and advise the Administrator on these and other matters. Members of the Advisory Board would be appointed by the President and would have staggered five-year terms.

Under the bill, the Corporation would issue capital stock to the United States (to be held by the Secretary of the Treasury) representing an equity investment equal to the book value of the assets transferred to the Corporation.

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[7] It is unclear whether electing owners and licensees would be currently taxable on interest earned on contributions made to the Tailings Fund or whether amounts contributed to the Tailings Fund would be deductible at the time such contributions are made.

[8] Under normal tax law principles, a corporation receiving assets in a tax-free transaction takes a carryover basis in such assets which would, in general, be equal to the amount paid by the transferee for such assets less the amount which would have been allowable as a deduction for depreciation.

The Corporation would pay dividends on the capital stock into the Treasury. The bill would also require the Corporation to repay $364 million to the Treasury (the "initial debt") over a 20-year period. The bill specifies that the receipt by the United States of the capital stock of the Corporation together with repayment of the initial debt would constitute the sole recovery by the United States of previously unrecovered costs incurred by the United States for uranium enrichment activities prior to enactment.

The bill would authorize the Corporation to issue and sell bonds to the general public in an amount not exceeding $2.5 billion. The bonds issued by the Corporation would not be obligations of the United States and payments of principal and interest thereon would not be guaranteed by the United States. The principal and interest on the bonds would be payable from the revenues of the Corporation. The Corporation could not issue or sell any bonds to the Federal Financing Bank.

The bill provides that the Corporation would establish prices and charges for its products, materials and services that would, over the long term, recover the costs of performing and maintaining corporate functions (including research and development, depreciation of assets, decontamination and decommissioning, and repayment of the initial debt and other obligations of the Corporation) and generate profits consistent with the maintenance of the Corporation as a continuing, commercial enterprise.

The bill provides that the Corporation would be audited each year and that the Corporation would prepare annual reports.

The bill provides that the Corporation would be exempt from State and local taxes on its real and personal property, activities and income. The Corporation is authorized and directed, however, to make payments to State and local governments as provided in the bill. The Corporation would not be exempt from Federal tax.

The bill would establish the Uranium Enrichment Decontamination and Decommissioning Fund (the "Decommissioning Fund") as an account of the Corporation in the United States Treasury to pay for the costs of decontaminating and decommissioning properties of the

Corporation. The Corporation would make annual deposits to the Decommissioning Fund in amounts equal to the costs of decontamination and decommissioning that have been recovered during each year by the Corporation in its prices and charges.[9]

Effective date

Except as otherwise provided, the provisions of the bill relating to uranium revitalization and remedial action would be effective upon the date of enactment. The provisions of the bill relating to the United States Enrichment Corporation generally would be effective on the day following the end of the first full fiscal year quarter following enactment.

B. H.R. 4934 (Mr. Richardson and Mr. Hubbard) and H.R. 4975 (Mr. Nielson, et. al.)

Revitalization of U.S. uranium industry

H.R. 4934 and H.R. 4975 would establish the Uranium Revitalization Fund (the "Revitalization Fund") as a separate fund within the Treasury. Amounts in the Revitalization Fund would consist of: (1) contributions from owners or licensees of certain uranium processing sites and certain real property in the vicinity of such sites ("active sites") who elect to participate in reclamation, decommissioning, and other remedial action through the Revitalization Fund; (2) contributions of $90 million per year over five years by the United States Enrichment Corporation (the "Corporation"), a corporation to be established by the bills; (3) mandatory fees imposed on licensees of civilian nuclear power reactors up to $1 billion; and (4) interest earned on sums in the Revitalization Fund. The Revitalization Fund may also receive contributions from States in which active sites are located, but such State contributions are not mandatory.

H.R. 4934 and H.R. 4975 would repeal an existing statute that prohibits domestic enrichment of foreign uranium ore when the domestic uranium mining industry does not meet established criteria for market viability.

Priority for expenditures and disbursements from the Revitalization Fund would be given to the purchase by the Secretary of Energy of $750 million of domestic uranium over a six-year period, as outlined in the bills.

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[9] It is unclear whether the Corporation would be currently taxable on interest earned on deposits made to the Decommissioning Fund or whether amounts deposited in the Decommissioning Fund by the Corporation would be deductible at the time such deposits are made.

H.R. 4934 and H.R. 4975 would (1) restrict the use of existing U.S. uranium inventory and would prohibit its sale, (2) provide that uranium purchased by the Secretary of Energy with amounts from the Revitalization Fund would be property of the Corporation and would restrict the use of such uranium by the Corporation, and (3) restrict the use by the Corporation of uranium in which the quantity of the U_{235} isotope had been depleted in the enrichment process ("enrichment tails"). The bills would also provide that in no event shall the use of uranium, as restricted above, decrease the demand for natural uranium by U.S. utilities in comparison to the demand that would exist in the absence of such use.

Remedial action for uranium and thorium mill tailings

H.R. 4934 and H.R. 4975 have essentially the same provisions as H.R. 4489 concerning remedial action, except that H.R. 4489 does not establish the Tailings Fund. Instead, the Secretary of Energy would disburse available amounts from the Revitalization Fund as partial reimbursement to electing owners or licensees of certain active sites for the costs of remedial action associated with existing mill tailings at those sites.

Establishment of United States Enrichment Corporation

H.R. 4934 and H.R. 4975 have essentially the same provisions as H.R. 4489 concerning the establishment of the United States Enrichment Corporation, except that out of each $90 million payment made by the Corporation to the Revitalization Fund over five years, $60 million will be credited against payments owed to the Treasury on the initial debt.

Effective date

H.R. 4934 and H.R. 4975 have essentially the same effective dates as H.R. 4489.

IV. ISSUES

A. Increasing Demand for Domestic Uranium

Each of the bills proposes to increase the demand for domestically mined uranium. H.R. 4934 and H.R. 4975 would establish a Federal fund, part of the proceeds of which would be used to purchase domestically mined uranium. H.R. 4489 would impose charges on domestic utilities that use foreign-source uranium in new fuel assemblies loaded in their nuclear reactors.

H.R. 4934 and H.R. 4975

H.R 4934 and H.R. 4975 require the Secretary of Energy to purchase $750 million of uranium domestic producers between 1989 and 1994.[10] The additional uranium purchased is to be permanently held off the market by requiring that it be used to "overfeed" the uranium enrichment process or to preproduce enriched uranium.[11] Increasing the demand for domestic uranium will increase the prices and net income domestic producers receive for their product. Mining employment probably would increase. However, the purchase of uranium subsidizes the domestic uranium industry which might provoke complaints from trading partners.

Increasing the demand for domestic uranium increases the demand for all uranium. It can be expected that the price of foreign uranium will increase as well. Consequently, some of the benefit of the uranium purchases will flow abroad.

Most regulatory authorities permit the pass through of increased fuel costs. As a result, the increased price of uranium ultimately would lead to higher electricity costs for both individuals and business. Moreover, the uranium which is purchased is to be used to overfeed the enrichment process. At current prices, overfeeding is more costly than not overfeeding, so the enriched product will be more expensive than otherwise.

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[10] $80 million of the scheduled 1989 purchases are set aside for purchases from small producers (net assets less than $200 million). Purchases are to be limited to no more than one million pounds of domestic uranium per domestic producer per year unless it is necessary to violate this limit to achieve the annual aggregate purchase goal.

[11] Uranium ore needs to be enriched to be suitable for use in a nuclear reactor. The enrichment process requires large amounts of electricity, but using more uranium can substitute for some electricity. Overfeeding occurs when uranium is substituted for electricity. At current prices for uranium and electricity, overfeeding is more costly than not overfeeding.

The temporary increase in demand which results from the uranium purchase program may not insure the long-run viability of the domestic uranium industry. The short run increase in the price of uranium could cause domestic and foreign producers to develop additional capacity resulting in long-run oversupply and depressed future prices. Moreover, the proposal could induce domestic producers to mine their most readily accessible reserves, making future mining efforts more expensive.

H.R. 4489

H.R. 4489 attempts to increase domestic demand by curbing utilities' use of foreign uranium. This would be accomplished by assessing a charge on the use of foreign uranium. The charge begins at a level of $200 per kilogram if the percentage of foreign uranium which a utility uses is between 37.5 and 55 percent of its total annual uranium consumption. The charge increases to $500 per kilogram if the utility's consumption of foreign uranium exceeds 80 percent of its total annual uranium consumption.

By making foreign uranium more expensive, the bill would increase demand for domestic uranium. This would increase the price of domestic uranium and the net income of domestic producers. Concomitantly, domestic mining employment should increase.

The charges on foreign uranium could create inequities. Because the charges assessed on the use of foreign uranium increase with the percentage rather than the amount of foreign uranium used, it is possible that a utility with a small reactor could pay more in charges than a utility with a large reactor, even though the larger utility actually uses more foreign uranium. In addition, the discriminatory charges on foreign uranium could cause frictions with our trading partners.

As with the proposals to purchase domestic uranium, the price increase on uranium ultimately will find its way to individuals and businesses in the form of higher electricity rates.

B. Reclamation of Uranium Mine Tailings

As a result of the presence of radon gas and other radioactive materials, uranium mill tailings present a potential threat to the environment and public health. Controlling these hazards through reclamation imposes costs on society. Present law requires that the mining companies bear these costs. H.R. 4489, 4934, and 4975 would require that nuclear utilities and the Federal Government, either directly or through its ownership of the U.S. Enrichment Corporation, share these costs.

Under present law, the liability of the mining companies for future reclamation is perceived as a cost of the mining business and recovered in the price charged for uranium ore. In this way, utilities and the Federal Government ultimately share in the cost of reclamation to the extent that they consume uranium. However, if foreign producers are not required to reclaim mine tailings, the increase in domestic prices could lead to greater import penetration.

The bills would require mining companies to contribute to a reclamation fund: this cost probably would be reflected in the price the Federal Government and utilities would pay for uranium. The bills also would require utilities to contribute to a reclamation fund based upon the amount of uranium they consume and the Federal Government to contribute amounts which are unrelated to its uranium consumption. Thus it is likely that the ultimate sharing of the costs of reclamation will be different than under present law.

In addition, each of the bills requires that the Federal government pay interest on the monies contributed to the fund. If on January 31, 1994 (H.R. 4934, H.R. 4975) or January 31, 1996 (H.R. 4489), and annually thereafter, the Secretary of Energy determines that the fund contains excess reserves, those excess monies may be refunded. Under H.R. 4489, the refunds would go first to the mining companies, then to any State which contributed to the fund, and last to the U.S. Treasury. Under H.R. 4934 and H.R. 4975, the refunds would go first to the mining companies, then to any State which had contributed to the fund, then to the purchase of more domestic uranium, and last to utilities. Refunds to the utilities or the Federal Government would not bear any relationship to initial contributions.

C. Creation of the United States Enrichment Corporation

Each bill would take the uranium enrichment administrative offices and those production facilities which currently are operated by the DOE and transfer them to the newly created United States Enrichment Corporation ("USEC"). USEC would be wholly owned by the Federal government with authority to issue non-guaranteed debt.

USEC would be free to pay dividends to the U.S. Treasury or retain earnings for future investments. As a corporation it would not be subject to the annual appropriations process. This would give it the flexibility to borrow to make investments as it deems appropriate, unencumbered by the budget process. As a corporation, USEC might be able to generate certain administrative savings. This might enable

USEC to enrich uranium less expensively than the DOE. USEC also would gain pricing flexibility which is unavailable to DOE. However, the important process of uranium enrichment would be subject to less Congressional oversight.

Because its debt would carry no Federal guarantee, any borrowing USEC undertakes to build new facilities would be at a higher interest cost than if DOE undertook the same project. However, the credit market probably would recognize the role of the Federal Government behind USEC in the credit ratings of their obligations. Consequently, the cost of USEC's debt probably would be lower than that of most private corporations. This low interest cost carries with it potential risk to the Federal Government. There may be a contingent liability imposed on the government by such issues, despite any disclaimer, which is viewed as a moral obligation of the Federal Government. Failure to rescue USEC in the event of a possible default probably would jeopardize the current, high credit rating of all other government sponsored enterprises such as the Federal National Mortgage Association, the Government National Mortgage Association, and the Farm Credit System Insurance Corporation.

USEC would not represent true privatization because the Federal Government would be the sole shareholder and probably would be perceived as standing behind USEC's debt. However, the world market for uranium enrichment services hardly can be characterized as a private market since the other three suppliers to noncommunist countries are government owned.

Chairman **Rostenkowski**. Good morning. The Committee on Ways and Means is scheduled today to hear testimony on bills relating to promotion of domestic uranium mining and financing of uranium enrichment and uranium mill tailing reclamation.

These bills include H.R. 4489, and two bills which are identical, H.R. 4934 and H.R. 4575. These bills would establish a Federal fund to assist in the financing of reclamation and other remedial action at currently active uranium and thorium processing sites. The fund would be financed by one, contributions by owners of active mine sites; two, contributions from U.S. Enrichment Corporation; and three, mandatory fees imposed on licensees of civilian nuclear power reactors.

The committee will be particularly interested in hearing the witnesses' comments as to whether the fees imposed on licensees of civilian nuclear power reactors constitute the imposition of a tax.

The bills also would promote a domestic uranium mining industry either by imposing a charge on foreign uranium contained in nuclear reactor fuel assemblies, or by authorizing funds for the purchase of domestic uranium by the Federal Government.

As the committee with jurisdiction over international trade agreements and import policy, and tax matters, the committee is particularly interested in hearing comments by today's witnesses on the significance for U.S. trade and tax policy of these different bills.

We will hear first from two distinguished Members of Congress who have a particular interest in this issue, and it is a pleasure for me, as chairman of the committee, to welcome Representative Cheney and Representative Richardson who have been working in this vineyard for a long period of time, and who, I am sure, will help us in the decisions that will come forward from this committee.

Mr. Cheney, if you would like to begin with your testimony, the committee is ready to receive it.

STATEMENT OF HON. DICK CHENEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Mr. **Cheney**. Thank you very much, Mr. Chairman. I want to begin by expressing my gratitude to you for your willingness to schedule this hearing today to examine these bills which are of great importance to the survival of the uranium and nuclear power industries.

I have a more detailed statement that I would ask permission to submit for the record.

Chairman **Rostenkowski**. Without objection, your entire statement will be included in the record.

Mr. **Cheney**. And I will just make a very brief summary statement, at this time, about the issues before us.

The issues are made more important today, more urgent, by House action this week, Mr. Chairman, implementing legislation for the free trade agreement with Canada, which I was happy to support yesterday.

The agreement eliminates protections for the domestic uranium industry that have been in place for approximately 25 years.

It is just as important now, as ever, however, to maintain a domestic uranium industry capable of meeting strategic national needs now and in the future.

As the House Interior Committee noted in its recent report on the free trade agreement implementing legislation, and I quote:

> Even if the United States were to disarm all of its nuclear weapons and never build or license another nuclear power plant, over 200 nuclear powered ships in the U.S. Navy, and over 100 commercial plants supplying nearly 20 percent of the Nation's electricity will continue to depend upon a reliable supply of affordable uranium into the next century.

Yet right now, the industry is in danger of becoming extinct. Employment has declined an incredible 90 percent in recent years, from more than 20,000 workers in 1979, when I first came to Congress, to fewer than 2,000 today.

Production has fallen by 75 percent and all but a handful of the mills and mines around the country are now closed.

Congress must replace the protective provisions which are eliminated by the free trade agreement with the comprehensive uranium nuclear revitalization package contained in the pending House bills.

This same legislation was attached just this week by the Senate to the House-passed Nuclear Regulatory Commission reauthorization bill, H.R. 1315, and will now go to conference.

It has taken 5 long years, and a great deal of very hard work and negotiation by many knowledgeable people, in and out of Government, to put together the uranium nuclear package.

The current version, which is contained in H.R. 4934 and H.R. 4975 before the committee today, has attracted the support of the diverse factions associated with the issue, including uranium miners, the millers, the processors, the unions and the utilities.

The administration supports the package and would have included it in the implementing legislation for the free trade agreement, except for the desire to accommodate those in Congress who wished for more orderly procedural reasons to consider uranium legislation as a separate item. And I might say I concurred in that judgment.

Counting today's hearing, three of the four jurisdictional committees in the House have held hearings. With time running short both for this Congress and the industry, it is very important that we take action now.

I hope this committee will use its considerable influence and prestige to help move a uranium bill this year. I stand ready to lend whatever assistance I can to such an effort and I want to thank you for this opportunity to testify, Mr. Chairman, and for the willingness of your committee to consider this vitally important legislation.

[The statement of Mr. Cheney follows:]

STATEMENT OF CONGRESSMAN DICK CHENEY, R-WYOMING
BEFORE THE
HOUSE COMMITTEE ON WAYS AND MEANS
CONCERNING H.R. 4489, H.R. 4975 AND H.R. 4934, BILLS AFFECTING THE URANIUM AND NUCLEAR POWER INDUSTRIES

August 10, 1988

Mr. Chairman, I am grateful to you for scheduling this hearing to examine bills which are vital to the survival of the uranium and nuclear power industries.

The issues before us today are made more urgent by House action this week on the implementing legislation for the Free Trade Agreement with Canada. This agreement eliminates two protections for the domestic uranium industry which have been in place for the past 25 years -- a requirement that our government act to assure a viable domestic industry, and authority for the government to impose restrictions on uranium imports in certain circumstances.

Of course, times have changed since those protections were devised, and so have attitudes and circumstances affecting nuclear power. Nevertheless, the reality today, and for the years ahead, is that as much as ever we need to maintain our nuclear power capabilities. It is important to our national security and to the American public. And if we are going to wipe out current protective provisions aimed at preserving a viable domestic uranium supply by our implementation of the Free Trade Agreement, then we need to act quickly to replace those provisions with ones suited to today's conditions and circumstances.

Those circumstances are clear: even if the United States were to immediately disarm all of its nuclear weapons and never license or build another nuclear power plant, over 200 nuclear-powered ships in the U.S. Navy and over 100 commercial power plants supplying nearly 20 per cent of the nation's electricity will continue to require a reliable supply of affordable uranium well into the next century.

And there are those in this country who look at the current nationwide drought, study the literature about the greenhouse effect, and speculate that in future years, the nuclear energy option may take on great new importance as an alternative to burning more fossil fuels.

The domestic uranium industry right now is in danger of becoming extinct. In the past several years, employment in the industry has declined by an unimagineable 90 per cent, from over 20,000 workers in 1979 to fewer than 2,000 today. There has been a 75 per cent drop in production, almost all of the mills are closed, and only a handful of mines continue to operate. For responsible public officials to sit idly by while this strategic industry slips away is dereliction of duty.

Mr. Chairman, the pending legislation is critical to the maintenance of a bare-bones domestic uranium industry. It represents five long years of hard work by intelligent people in and out of government to find a way to keep the industry alive and capable of meeting strategic national needs now and in the future.

The provisions of H.R. 4975 and H.R. 4934 constitute a legislative package that has attracted the support of the diverse factions associated with the nuclear industry, including the uranium miners, the millers and processors, and the utilities. The Administration supports this package and would have included it in the implementing legislation for the Free Trade Agreement but for the desire to accommodate those in Congress who wished for procedural reasons to consider uranium legislation as a separate item. Counting today's hearing, three of the four jurisdictional committees in the House have completed hearings on the package, and the Senate has voted by a substantial margin to approve similar legislation.

The provisions of H.R. 4975 and H.R. 4934 represent the most recent versions of the package that has been in the works for so long. Each contains three basic programs to revitalize the domestic uranium industry and enrichment program.

Briefly, the bills create a Uranium Revitalization Fund to be managed by the Secretary of Energy. Using the Fund, the Secretary would buy $750 million worth of domestic uranium for use in the government stockpile and enrichment program. This five-year program would give the domestic uranium industry a real shot in the arm.

Secondly, the bills authorize the Secretary to use money from the Fund to help pay costs of reclaiming mill tailings created by producing uranium for defense purposes and nuclear utilities.

Money for these programs would come from the uranium producers, from nuclear utilities and from enrichment revenues. The cost to consumers would be about 2.5 cents per month -- a small and reasonable price to pay for preserving a strong uranium industry.

Finally, the bills create a new U.S. Enrichment Corporation to take charge of federal enrichment programs and run them like a business -- to be more cost-effective and compete in world markets.

Mr. Chairman, I strongly urge the Committee to promptly and favorably report either of these bills for House consideration.

The circumstances and timing are right to pass a bill in the House and finally put in place a sensible and much-needed program to preserve the nuclear option. I hope you will help us get on with that duty.

I stand ready to work with the members of this and other committees with jurisdiction over this legislation to resolve any problems there may be and to move the package forward.

Thank you for this opportunity to testify, Mr. Chairman, and for your willingness to consider this important legislation.

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Chairman ROSTENKOWSKI. Thank you, Mr. Cheney. Mr. Richardson.

STATEMENT OF HON. BILL RICHARDSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. RICHARDSON. Thank you, Mr. Chairman, and I wish to commend Mr. Cheney for his statement. My statement is very similar. It has been through his efforts and those of others, that we have tried to revitalize the uranium industry here, in the Congress, and within the administration.

Mr. Chairman, I was one of the 30 votes against the free trade agreement because I felt that the agreement deals very severely with the domestic uranium industry.

It had been my hope that some of the bills we are discussing in this hearing today would be part of the free trade agreement, but, regrettably, this did not happen.

The future of the uranium industry is important to many States in this country, most importantly perhaps to the States of New Mexico and Wyoming.

As an example, employment in the U.S. uranium industry has dropped from more than 22,000 employees in 1980 to less than 1,500 today.

In my own home State, we have had a decrease of 2,100 employees producing 5 million pounds of uranium in 1981. Five years later, 60 employees producing only 150,000 pounds of uranium.

There is great concern, Mr. Chairman, that the free trade agreement contains a very damaging provision to the uranium industry, namely, the repeal of section 161(v) of the Atomic Energy Act with respect to Canada.

The domestic uranium industry will not be able to regain a competitive position in the marketplace. The bills that Mr. Cheney and I, and 53 other Members have cosponsored, are designed simply to put the uranium industry back on its feet, and restructure the U.S. enrichment operation to allow it to compete in the world market.

Mr. Chairman, with a partial repeal of section 161(v) of the act, the Department of Energy will no longer have the tools to carry out its mandate to protect the uranium industry.

Due to changing energy policies, there has been a decrease in the number of nuclear power facilities being constructed, with a consequent reduction in demand for uranium and a substantial increase in uranium stockpiles.

Moreover, the domestic uranium industry is saddled with a costly responsibility of reclaiming residual mill tailings cast off in the mining process.

The cumulative effect of these factors, combined with increasingly vigorous foreign competition, have placed the industry at an insurmountable disadvantage as it attempts to regain viability and market share.

This situation presents the domestic uranium industry with grave problems. Canadian uranium, whose production is subsidized by the Government, to upwards of $2.25 billion, would undersell all American uranium.

The already-depressed domestic uranium market would be further hampered due to the unfairness of these subsidies.

Therefore, the industry would remain nonviable while the subsidized Canadian industry prospers with: unimpeded access to the American market.

Lacking any adjustment provisions for the uranium industry, implementation of the free trade agreement does not allow the domestic uranium industry either sufficient time or the means to surmount its many problems.

If the Congress does not address these crucial issues in the near future, it is unreasonable to expect that our Nation will ever again have a viable and competitive domestic uranium industry.

I do appreciate your including H.R. 4489 in today's hearing schedule, but concede that as currently written, it contains trade restrictions which are incompatible with the free trade agreement.

It is worth noting, however, that this bill garnered 53 cosponsors from throughout the country, bipartisan, clearly showing that there is strong bipartisan desire to restructure the domestic uranium industry.

H.R. 4934 which I introduced is essentially the same package which you were asked to include in the FTA. I think you will agree that the bill is neutral on trade and in fact actually opens up the uranium trade to countries other than Canada by repealing section 161(v) in its entirety.

Many have described this bill as a bailout for the industry, something I would strongly deny. It simply provides appropriate adjustment mechanisms for the industry to adapt to the new and more competitive market for uranium.

The uranium purchase program contained in the bill is designed to lower the existing stockpiles and substitute for expensive electricity in the enrichment process.

Had public policy not turned against nuclear power we would not have had the oversupply problems we have today. Others argue that the assistance provided in cleaning up the mill tailings is not needed and that the uranium companies are able to pay their reclamation costs out of current revenues.

That would be fine if section 161(v) were still in effect and the industry could properly absorb reclamation costs.

However, the uranium industry will be unable to compete at world prices as long as it has outstanding reclamation costs which raises their costs beyond the market price.

While some have characterized a loading fee of $72 per kilogram of uranium loaded into reactors as a tax, I think it could be more accurately considered a retroactive charge for mill tailings reclamation.

This charge would have been covered in uranium procurement contracts which the utilities signed in the 1970's had current reclamation requirements been in place. The charge also reflects a utility contribution to the procurement of uranium for use in the Government enrichment program, which will reduce the cost of enrichment services for utilities.

I think it is fair to say that the utilities will receive direct benefits from payment of this fee. In conclusion, Mr. Chairman, this legislation is the result of a compromise between the uranium producers, the electric utility industry, legislators and the administration.

It creates a framework through which this industry could regain its competitive position in the marketplace. With the recent passage of the United States-Canada FTA, the need for this legislation is greater than ever this calendar year.

I believe that after thorough consideration of the situation, and this legislation, your committee will hopefully concur.

I thank the chairman for this opportunity and I look forward to speedy consideration of our legislation.

[The statement of Mr. Richardson follows:]

STATEMENT BY CONGRESSMAN BILL RICHARDSON
BEFORE THE COMMITTEE ON WAYS AND MEANS
AUGUST 10, 1988

MR. CHAIRMAN, THANK YOU FOR SCHEDULING THIS HEARING TODAY ON H.R. 4489, H.R. 4934, AND H.R. 4975, THREE BILLS WHICH ARE DESIGNED TO PUT THE URANIUM INDUSTRY BACK ON ITS FEET AND RESTRUCTURE THE U.S. ENRICHMENT OPERATION TO ALLOW IT TO COMPETE IN THE WORLD MARKET. I KNOW THE COMMITTEE HAS MANY OTHER WITNESSES TO HEAR FROM SO I WILL KEEP MY REMARKS BRIEF.

I MUST ALSO CONGRATULATE YOU ON THE VOTE ON THE U.S.-CANADA FREE TRADE LEGISLATION. AS I'M SURE YOU KNOW, I WAS ONE OF THE THIRTY MEMBERS WHO VOTED AGAINST IT, PRIMARILY BECAUSE THE AGREEMENT FAILS TO ADDRESS THE CONCERNS OF THE DOMESTIC URANIUM INDUSTRY. I CERTAINLY RESPECT THE POSITION YOU TOOK EARLIER THIS YEAR WHEN A PROPOSAL WAS MADE TO INCLUDE URANIUM LEGISLATION ON THE FREE TRADE AGREEMENT, BUT HAD YOU CHOSEN OTHERWISE, I COULD HAVE SUPPORTED THE BILL.

THE U.S. - CANADA FREE TRADE AGREEMENT HARBORS THE BEGINNING OF A NEW ERA IN OUR NATION'S RELATIONS WITH CANADA. IT CONTAINS SOME SIGNIFICANT ADVANTAGES WHICH ARE IMPORTANT TO MANY U.S. INDUSTRIES, BUT IS PARTICULARLY DAMAGING TO THE DOMESTIC URANIUM INDUSTRY.

THE FUTURE OF THE URANIUM INDUSTRY IS OF PARTICULAR CONCERN TO THE PEOPLE OF NEW MEXICO AND OTHER URANIUM PRODUCING STATES WHO HAVE SUFFERED THROUGH THE DECLINE OF THE DOMESTIC URANIUM INDUSTRY. EMPLOYMENT IN THE U.S. URANIUM INDUSTRY HAS DROPPED FROM MORE THAN 22,000 EMPLOYEES IN 1980 TO LESS THAN 1,500 TODAY. MY HOME STATE OF NEW MEXICO HAS BEEN PARTICULARLY HARD HIT. ONE COMPANY OPERATING IN NEW MEXICO HAD 2,100 EMPLOYEES PRODUCING 5 MILLION POUNDS OF URANIUM IN 1981. FIVE YEARS LATER IT HAD ONLY 60 EMPLOYEES PRODUCING 150,000 POUNDS OF URANIUM. THERE ARE SIMILAR SITUATIONS THROUGHOUT OUR NATION'S URANIUM PRODUCING REGION.

FURTHERMORE, THERE IS GREAT CONCERN THAT WITH THE IMMEDIATE REPEAL OF SECTION 161v. OF THE ATOMIC ENERGY ACT WITH RESPECT TO CANADA, THE DOMESTIC URANIUM INDUSTRY WILL NOT BE ABLE TO REGAIN A COMPETITIVE POSITION IN THE MARKETPLACE. CONGRESS PASSED THE ATOMIC ENERGY ACT WITH THE EXPRESS INTENT OF MAINTAINING A VIABLE DOMESTIC URANIUM INDUSTRY FOR OUR NATION'S ENERGY AND NATIONAL SECURITIES. BY LAW THE DEPARTMENT OF ENERGY IS MANDATED TO MAINTAIN THE INDUSTRY HEALTHY AND VIABLE. WITH THE PARTIAL REPEAL OF SECTION 161v. OF THE ACT, THE DEPARTMENT OF ENERGY WILL NO LONGER HAVE THE TOOLS TO CARRY OUT ITS MANDATE.

DUE TO CHANGING ENERGY POLICIES, THERE HAS BEEN A DECREASE IN THE NUMBER OF NUCLEAR POWER FACILITIES BEING CONSTRUCTED WITH A CONSEQUENT REDUCTION IN DEMAND FOR URANIUM AND A SUBSTANTIAL INCREASE IN URANIUM STOCKPILES. MOREOVER, THE DOMESTIC INDUSTRY IS SADDLED WITH THE COSTLY RESPONSIBILITY OF RECLAIMING RESIDUAL MILL TAILINGS CAST OFF IN THE MINING PROCESS. THE CUMULATIVE EFFECT OF THESE FACTORS, COMBINED WITH INCREASINGLY VIGOROUS FOREIGN COMPETITION, HAVE PLACED THE DOMESTIC URANIUM INDUSTRY AT AN INSURMOUNTABLE DISADVANTAGE AS IT ATTEMPTS TO REGAIN VIABILITY AND MARKET SHARE.

THIS SITUATION PRESENTS THE DOMESTIC URANIUM INDUSTRY WITH GRAVE PROBLEMS. CANADIAN URANIUM, WHOSE PRODUCTION IS SUBSIDIZED BY THEIR GOVERNMENT TO UPWARDS OF $2.25 BILLION DOLLARS, WOULD UNDERSELL ALL AMERICAN URANIUM. THE ALREADY DEPRESSED DOMESTIC URANIUM MARKET WOULD BE FURTHER HAMPERED DUE TO THE UNFAIRNESS OF

SUBSIDIES AND SO CALLED "FREE TRADE." THEREFORE, THE DOMESTIC URANIUM INDUSTRY WOULD REMAIN NON-VIABLE WHILE THE SUBSIDIZED CANADIAN INDUSTRY PROSPERS FROM UNIMPEDED ACCESS TO THE U.S. MARKET.

LACKING ANY ADJUSTMENT ASSISTANCE FOR THE URANIUM INDUSTRY, IMPLEMENTATION OF THE FREE TRADE AGREEMENT DOES NOT ALLOW THE DOMESTIC URANIUM INDUSTRY NEITHER SUFFICIENT TIME NOR THE MEANS TO SURMOUNT ITS MANY PROBLEMS. IF THE CONGRESS DOES NOT ADDRESS THESE CRUCIAL ISSUES IN THE NEAR FUTURE, IT IS UNREASONABLE TO EXPECT THAT OUR NATION WILL EVER AGAIN HAVE A VIABLE AND COMPETITIVE DOMESTIC URANIUM INDUSTRY.

I APPRECIATE YOUR INCLUDING H.R. 4489 IN TODAY'S HEARING SCHEDULE, BUT CONCEDE THAT AS CURRENTLY WRITTEN IT CONTAINS TRADE RESTRICTIONS WHICH ARE INCOMPATIBLE WITH THE FREE TRADE AGREEMENT. IT IS WORTH NOTING, HOWEVER, THAT THIS BILL GARNERED 53 COSPONSORS, FROM THROUGHOUT THE COUNTRY, CLEARLY SHOWING THAT THERE IS A STRONG BIPARTISAN DESIRE TO RESTRUCTURE THE DOMESTIC URANIUM INDUSTRY.

H.R. 4934, WHICH I INTRODUCED, IS ESSENTIALLY THE SAME PACKAGE WHICH YOU WERE ASKED TO INCLUDE IN THE FTA. I THINK YOU WILL AGREE THAT THE BILL IS NEUTRAL ON TRADE, AND IN FACT ACTUALLY OPENS UP THE URANIUM TRADE TO COUNTRIES OTHER THAN CANADA BY REPEALING SECTION 161V. IN ITS ENTIRETY.

MANY HAVE DESCRIBED THIS BILL AS A BAILOUT FOR THE INDUSTRY, SOMETHING I WOULD STRONGLY DENY --- IT SIMPLY PROVIDES APPROPRIATE ADJUSTMENT MECHANISMS FOR THE INDUSTRY TO ADAPT TO THE NEW, AND MORE COMPETITIVE MARKET FOR URANIUM. THE URANIUM PURCHASE PROGRAM CONTAINED IN THE BILL IS DESIGNED TO LOWER THE EXISTING STOCKPILES, AND SUBSTITUTE FOR EXPENSIVE ELECTRICITY IN THE ENRICHMENT PROCESS. HAD PUBLIC POLICY NOT TURNED AGAINST NUCLEAR POWER, WE WOULD NOT HAVE THE OVERSUPPLY PROBLEMS WE HAVE TODAY.

OTHERS ARGUE THAT THE ASSISTANCE PROVIDED IN CLEANING UP THE MILL TAILINGS IS NOT NEEDED AND THAT THE URANIUM COMPANIES ARE ABLE TO PAY THE RECLAMATION COSTS OUT OF CURRENT REVENUES. THAT WOULD BE FINE IF SECTION 161V. WERE STILL IN EFFECT AND THE INDUSTRY COULD PROPERLY ABSORB RECLAMATION COSTS. HOWEVER, THE URANIUM INDUSTRY WILL BE UNABLE TO COMPETE AT WORLD PRICES AS LONG AS IT HAS OUTSTANDING RECLAMATION COSTS WHICH RAISES THEIR COSTS BEYOND THE MARKET PRICE.

WHILE SOME HAVE CHARACTERIZED THE LOADING FEE OF $72 PER KILOGRAM OF URANIUM LOADED INTO REACTORS AS A TAX, I THINK IT COULD BE MORE ACCURATELY CONSIDERED A RETROACTIVE CHARGE FOR MILL TAILINGS RECLAMATION. THIS CHARGE WOULD HAVE BEEN COVERED IN URANIUM PROCUREMENT CONTRACTS WHICH THE UTILITIES SIGNED IN THE 1970'S, HAD CURRENT RECLAMATION REQUIREMENTS BEEN IN PLACE. THE CHARGE ALSO REFLECTS A UTILITY CONTRIBUTION TO THE PROCUREMENT OF URANIUM FOR USE IN THE GOVERNMENT ENRICHMENT PROGRAM, WHICH WILL REDUCE THE COST OF ENRICHMENT SERVICES FOR UTILITIES. I THINK IT IS FAIR TO SAY THAT THE UTILITIES WILL RECEIVE DIRECT BENEFITS FROM PAYMENT OF THIS FEE.

MR. CHAIRMAN, THIS LEGISLATION IS THE RESULT OF A COMPROMISE BETWEEN THE URANIUM PRODUCERS, THE ELECTRIC UTILITY INDUSTRY, LEGISLATORS AND THE ADMINISTRATION. IT CREATES A FRAMEWORK THROUGH WHICH THIS INDUSTRY COULD REGAIN ITS COMPETITIVE POSITION IN THE MARKETPLACE. WITH THE RECENT PASSAGE OF THE U.S.-CANADA FREE TRADE AGREEMENT, THE NEED FOR THIS LEGISLATION IS GREATER THAN EVER. I BELIEVE THAT AFTER THOROUGH CONSIDERATION OF THE SITUATION AND THIS LEGISLATION, YOUR COMMITTEE WILL AGREE.

Chairman Rostenkowski. Thank you very much, Mr. Richardson.

H.R. 4934 and H.R. 4975 require domestic utilities to provide $1 billion, and the Federal Government, through USEC, to provide $450 million to the uranium revitalization fund.

Could you tell me: how were these numbers chosen? Is there a scientific basis, or are they arbitrary allocations of the cost of the reclamation? And if you do not have that answer you can submit it for the committee in written form, but if you do, I would like you to share that with us.

Mr. Cheney. I would be happy to submit it. It is based upon data from within the industry, Mr. Chairman, and there will be witnesses this morning who are technical experts in the subject, and I am sure will be able to respond to that question.

[The information Mr. Cheney referred to comes from the Department of Energy. Mr. Cheney was unable to obtain this information.]

Chairman Rostenkowski. I understand. Thank you.

Any questions of the witnesses? Mr. Schulze.

Mr. Schulze. Thank you, Mr. Chairman.

I appreciate our colleagues' testimony, but I have got to admit this legislation gives me some concern. What goes through my mind is that we lost something like over 300,000 jobs in the steel industry, and the amount of Government involvement has been somewhere around $400 million. We are talking about an industry now, which if we lost it entirely, we are talking about 2,000 jobs; yet we are talking about something like $1.450 billion that we want to pump in.

You want to have an opportunity to convince me that we should make this kind of an investment?

Mr. Cheney. Well, if I may, Mr. Chairman——

Mr. Schulze. It sounds like, to me, Dick, that somebody has been extremely irresponsible if we have got to pump in that much money to save those jobs, or that we are doing something that is economically unfeasible. And so I would like you to have the opportunity to convince me that——

Mr. Cheney. Well, let me point out, first of all, to the gentleman, that the funds that we are talking about here are not just generated from the Federal Treasury.

A lot of this is generated through fees imposed on utilities, and mill tailings process, as well as other processors of the industry.

Mr. Schulze. But it is mandated.

Mr. Cheney. It is mandated. They do in fact have to spend it, but it does not all come out of the Federal Treasury.

Second, obviously I have an interest, as the Congressman from Wyoming, in looking at it from the standpoint of our local economy because it has been devastating.

The fact of the matter is, the uranium industry is pretty well gone from Wyoming today. We only have a couple of mines still in operation. One of those is French-owned. There is not a very large industry left per se to bail out.

But the reason for doing it, I think is because the United States, even with the Canadian Free Trade Agreement which I supported—because frankly, I think it is in the national interest—cannot afford to become absolutely totally dependent upon foreign sources for a commodity as important as uranium and the nuclear fuel we derive from that.

Congress has previously determined that we have an obligation, a responsibility, if you will, to maintain a viable domestic industry.

Mr. SCHULZE. How can the Canadians produce and deliver at prices so much lower than ours? Are they being vastly subsidized by millions of dollars?

Mr. CHENEY. In some cases there is a subsidy involved. In some cases they have higher grade ore, and of course that involves a reduced cost. What we have tried here is to put together a package that is not inconsistent with the Canadian Free Trade Agreement.

As I pointed out, I am a supporter of it, I think it makes sense, I think it is good for the country, but I believe very deeply in a proposition that we cannot, at this point, wipe out the final remnants of what is an absolutely crucial part of our energy economy from the standpoint of nuclear power requirements and from the standpoint, obviously, of our shipboard requirements.

Mr. SCHULZE. Mr. Cheney, a lot of people in the petroleum area say we ought to drain the Middle East first. In other words, let's not subsidize domestic production, encourage domestic production. Let's use that relatively low-priced oil up first. Why would that not apply to our uranium reserves?

Why not use other overseas sources, or foreign sources, and then if we have the need we have the domestic sources we could bring in. How much would it cost if we went out completely and wanted to start over? Would it cost more than $1.5 billion?

Mr. CHENEY. Well, I think it probably would. One of the problems we have got today in this country, for example, is we have virtually lost the capacity to build nuclear reactors.

The last new reactor that was ordered, that was actually completed, was 1974. We had an order placed in 1978 but it was cancelled. We have seen what has happened——

Mr. SCHULZE. We here are largely responsible for that.

Mr. CHENEY. That is right. But the fact is, over time, when you let that capability decay in something as complex and complicated, and as expensive as the nuclear power business, the difficulty of starting it up again is enormous, the up-front investment that would be required is considerable, and we think we have found a reasonable way here, at minimal cost, to preserve that capability, and we will still be importing significant amounts of uranium. We do today and we will, in the future, be buying a lot of Canadian ore.

This simply preserves a nugget, if you will, of that capability for the U.S. domestic industry.

Mr. SCHULZE. Now Dick, how were you able to get the administration to go along with you?

I am kind of surprised, because the administration absolutely refuses to go along with even encouraging Canada to have a voluntary restraint agreement on steel. Voluntary. Just absolutely will not hear of it, will not talk of it; it is totally against free trade. And I am just curious as to what kind of leverage you had to use to get them to go along with this.

Mr. CHENEY. We made them an offer they could not refuse.

Mr. SCHULZE. I would like to have some of that kind of leverage.

Mr. **Cheney**. If the Chair and the committee will indulge me, the administration was very helpful in this process, partly because I think they understand the importance, the purpose and the thrust of what we are trying to achieve here, and as they will testify later today, I think it would be fair to say they are enthusiastic supporters of the measure before us, which was developed with their wholehearted support and cooperation.

Mr. **Schulze**. Thank you.

Chairman **Rostenkowski**. Mr. Flippo.

Mr. **Flippo**. Thank you, Mr. Chairman. I appreciated your testimony. I am a little concerned about your funding mechanism and its equity on all utilities.

As you pointed out, it is not just Federal dollars that are going in there, but there is in fact a tax or a fee on the use of uranium in existing reactors that also flows into the fund.

And my concern is: what about those utilities that are not purchasing foreign source of uranium over the threshold amount, and are required, then, to pay this fee, or this tax which, of course, ultimately falls on their ratepayers? Let me tell you where I am coming from.

The Tennessee Valley Authority, TVA will not be purchasing, in the foreseeable future, foreign source uranium, and yet they would be required to pay this fee on their use of domestic uranium so that you could subsidize and purchase the foreign uranium.

Isn't that in fact the effect of the fee system that you are recommending, which subsidizes foreign purchases of uranium?

Mr. **Cheney**. Well, I—if the gentleman will yield, and then I would be happy to yield to my colleague, Mr. Richardson. I think it is important to remember that there are several things to be accomplished with the fund. One is obviously for the Government to direct the purchase of domestically produced uranium to maintain the industry.

But another part of the fund goes for the reclamation of our mill tailings problem that is significant at various places around the country.

In effect you could look upon the fee that is to be imposed upon the utilities as the cost, their contribution, if you will, to the overall problem of cleaning up the mill tailings that have been developed over the years as a result of the uranium processing; in many cases to develop the fuel that they currently consume.

Mr. **Flippo**. Well, if I might, Dick, let me address that issue. In this particularly case, TVA had a large tailings operation in the Dakotas area, and they had a problem there, and because of its proximity to the river, and some other factors, they went above and beyond the requirements of the law in cleaning up of that site.

The clean up cost $37 million which they have already incurred. Under your bill I think they would receive some reimbursement for this work.

But they have already made the investment to clean up this mill tailings site. It is hard for me to understand the equity, then, of requiring TVA to bear these costs while paying millions of dollars in fees to subsidize the importation of foreign uranium which is the effect of this legislation.

So I find it very difficult to understand the equity in that.

Mr. CHENEY. I am not familiar enough with the TVA situation, Mr. Flippo, to be able to give you a good answer on that.

Mr. FLIPPO. Would you be amenable to trying to work out something along those lines so that the proposals do provide some equity for these situations in which they would have to incur rather significant costs that would have to be borne by the ratepayers already?

And I might tell you, that we have a few nuclear plants down in our region that I might be willing, or I could be persuaded to perhaps let you have.

We have one down at Belle Fonte, that TVA has just postponed finishing. It has one unit that is 89 percent complete, and another unit that is 58 percent complete, with an investment in the neighborhood of $4 billion of ratepayers' money. We have several other deferred or canceled nuclear plants. I know your interest in this area is in trying to work out sound public policy, but I am just simply saying that there are some unique aspects of it that perhaps have not been given adequate consideration. This Member would look forward to trying to work out something that would satisfy those conflicting interests.

Mr. CHENEY. Well, I am sure those of us who are supporters of the legislation would be delighted to see equity in that arrangement. In Wyoming, we have a great interest in having the TVA resume its activities with respect to those plants since we had aspirations of selling you large amounts of Wyoming-produced uranium for that purpose.

I might mention, though, with all the concern about the greenhouse effect, and the problem of burning fossil fuels now, I think we are in for a resurgence of interest in nuclear power as a way to generate significant amounts of electricity in the years ahead.

Mr. FLIPPO. Mr. Chairman, if I might ask one further question, and I shall be brief, but, let me ask you about the management of the corporation that is proposed.

Is this Government-owned corporation subject to all the restrictions on pay that Government workers are? How is the board appointed? Could you give us a little bit of information on that.

Mr. RICHARDSON. We have a collection of experts here who will follow us, but the answer is yes, it would be subject to the requirements for other commission.

Mr. Flippo, if I could just mention something in relation to your question. I want to stress that the three bills that we are talking about today do not have this import restriction. The new loading fee, is on all domestic and imported uranium, and as background, let me just mention—Mr. Schulze asked a question about the subsidy.

One of the reasons we are here is that the Canadian Government subsidizes their own uranium operations to the tune of $2.2 billion. The uranium industry has not benefited from any import restrictions, or preferences, as other industries have, at a time when the industry has literally been dying.

For national security reasons, for equity reasons, for environmental reclamation, and because the Canada Free Trade Agreement repeals a provision in the Atomic Energy Act, and the Supreme Court decision, on section 161(v), dealing with uranium enrichment, we need legislation to put this industry back on its feet.

We have the support of the administration. The proposal reflects a compromise between the utilities, the miners and other interested parties, though. I know there has been some criticism. I am willing to work with our critics to achieve an acceptable solution, and welcome their input.

Mr. **Schulze**. Will the gentleman from Alabama yield.

Mr. **Flippo**. I will be delighted to.

Mr. **Schulze**. Is the $2.2 billion an annual amount, or is that over a 10-year period?

Mr. **Richardson**. That is over——

Mr. **Schulze**. $2.2 billion?

Mr. **Richardson**. $2.2 billion.

Mr. **Schulze**. Now is that analogous to the $9 billion of unrecovered costs which the Federal enrichment program owes the Treasury? In other words, have the taxpayers poured $9 billion into this program, which this bill then forgives all or most of?

Mr. **Richardson**. The $2.25 billion is the Canadian subsidy to the Canadian industry over a period of time. I do not have the exact number of years—it is not annual.

Mr. **Schulze**. Would that be analogous to the $9 billion, or not?

Mr. **Richardson**. I would not think so.

Mr. **Schulze**. If our Government has given the industry $9 billion, it seems to me that might be considered a subsidy. It is a pretty healthy subsidy. Thank you.

Chairman **Rostenkowski**. Any further questions? If not, I want to thank our colleagues, Mr. Cheney and Mr. Richardson for joining us, and sharing with us their views. Thank you very much.

The Chair would now like to ask Mr. Garrish, Mr. Trier, and Ms. Bello to come forward.

The Chair is going to recess because of the vote that is taking place on the floor, but we will reconvene the committee as soon as he gets back, or Mr. Flippo returns.

So, Mr. Garrish, Mr. Secretary, you will start off, and then we will go to Mr. Trier and Ms. Bello.

[Recess.]

Mr. **Gibbons** [presiding]. We will resume now with the Department of Energy's testimony. We are anxious to hear from you. You may proceed as you wish.

STATEMENT OF HON. THEODORE J. GARRISH, ASSISTANT SECRETARY FOR NUCLEAR ENERGY, U.S. DEPARTMENT OF ENERGY

Mr. **Garrish**. Mr. Chairman, thank you very much for holding these hearings this morning. We are pleased to be here this morning to have the opportunity to discuss our efforts on uranium with you, and I have a written statement which I would like to submit for the record and summarize, if I may.

Mr. **Gibbons**. Certainly. Without objection, your written statement will be included as a part of the record.

Mr. **Garrish**. Mr. Chairman, we believe that this morning's discussion comes at a critical time, a time when the availability of nuclear power will be significant to our energy future. Nuclear power provides one-sixth of our Nation's electrical needs and decreases our reliance on imported oil. Moreover, it also comes at a time when nuclear power offers a clean source of energy free of emissions that generate environmental concerns. Especially in these days of the global warming, which has been on concern, nuclear does offer a special potential.

Having a strong viable uranium industry and enrichment enterprise, we believe, is critical for the future. The nuclear industry also provides jobs for the economy and an improved balance of trade. Nevertheless, there is just cause for the concern about the status of uranium mining and the uranium enrichment industries. Both face serious problems today, and both face very strong foreign competition and are experiencing financial and economic hardships.

We believe that the administration's proposal to revitalize the uranium industry and restructure the enterprise is a sound and a comprehensive approach to the problems of both of these industries. The enrichment proposal is an important bill to our nuclear future. The proposal goes a long way to solve many of the problems that have plagued this enterprise. Most importantly, it begins to move the enrichment enterprise into the private sector. And in doing so, we believe it offers tremendous benefits in efficiency and will ultimately lead to a complete transfer into the private sector.

It helps to revitalize the uranium industry, which has had great difficulty over the years. Congress in 1964 enunciated a policy to ensure the viability of the uranium industry. And, in fact, it stated in the conference report of the Joint Committee on Atomic Energy, "The maintenance of a viable domestic industry is an integral part of a sound nuclear industry and may, indeed, be closely intertwined with the defense and security elements of the United States."

Achieving that has not been as easy as saying it. The industry has suffered two major boom-and-bust cycles, and we believe that the purchase program will go a long way to solve this particular problem. Finally, we believe the legislation gets on with the reclamation of the mill tailing sites, which we believe is a critical problem for the West.

Overall, our proposal accomplishes these tasks with virtually no net Federal expenditure and settles a number of long-standing contentious issues. We believe it is important from that aspect. Notwithstanding these benefits, we believe that there are a number of misconceptions that still exist on this program which I would like to address this morning.

The first misconception is that it has been stated that the proposal would require a huge Federal subsidy. We believe that the facts are that this is not a subsidy program, that there are no outlays from Treasury required. The U.S. Government would appropriate no funds to the uranium revitalization initiative. These would come from the corporation. In return, the corporation will receive uranium valued at $750 million. And this will allow the corporation to save at least $400 million in power costs.

The second misconception which I would like to discuss is the issue as to whether or not the proposal would result in a $9 billion bailout of the enrichment enterprise. The facts are that not only is there no bailout, but the administration proposal maximizes recovery of the Government investment.

No one is more concerned than the administration about the recovery of the Government's investment in this enterprise. We had the question as to whether or not there has been a debt. We believe that rather than a debt, it is an unrecovered Government investment which needs to be discussed and dealt with today.

The proposal to restructure as a Government-owned stock corporation we believe is the best means of recovering our Government's investment. And this comes in two forms: No. 1, from a dividend stream from the corporation; and, No. 2, from the sale of the stock.

The enterprise will generate a positive cash-flow of nearly a billion dollars by 1995 which could be used for dividends or eventually kept by the corporation and enhance its value as a stock sale. The strong cash-flow position will encourage the purchase of the stock. The potential return of several billion dollars is available to the Treasury through the stock sale after 1995.

The third misconception is that it has been suggested that the proposal will impose a heavy burden on taxpayers and ratepayers. We believe the facts are that there is no taxpayer burden and only a minuscule cost to nuclear utility ratepayers. No moneys are provided by the Treasury, and, therefore, there is no taxpayer impact. The cost increase to ratepayers is about 2.5 cents per month at an absolute maximum. We believe that this is a minuscule cost to pay for this sort of program. It could, in fact, be less based on power savings from overfeeding of uranium by the enrichment enterprises themselves.

The ratepayers benefit from a more efficient enrichment enterprise and a healthier domestic uranium industry. Taxpayers receive a greater return on their investment in the enterprise through the dividends received and eventually through the sale of stock.

Finally, there is a misconception, we believe, in that it has been suggested that the proposal represents a waiver or an escape from the responsibilities for cleanup of uranium mill tailings. We believe the facts are that the proposal does not diminish this responsibility and, in fact, expedites environmental compliance and settles an issue once and for all.

The Uranium Mill Tailings Radiation Control Act [UMTRCA] requires full compliance with remedial action standards issued by EPA that are consistent with RCRA. Since the proposal requires compliance with UMTRCA, there is no escape from our environmental responsibilities. And, in fact, we believe that this act encourages earlier and more efficient cleanup, and we believe that in the long run, delays will result in increased cost and increased burden of all of those that are responsible in these programs.

In conclusion, the administration's proposal, we believe, will ensure the health and viability of two key nuclear industries. We believe that the restructuring offers a solution to a long-standing, difficult and contentious problem for the uranium industry. We believe that it will help ensure a strong sales base and financial stream for both the uranium and the enrichment industries. We believe that our approach will provide a maximum return to the taxpayers on the Government's investment and will facilitate resolution of the environmental issues on uranium mill tailings. Importantly, we believe that this approach is compatible with free and open trade and the free trade agreement.

The legislation to restructure the enrichment business and revitalize the uranium industry is needed now. We believe that timely and decisive action by the Congress is important, and we are eager to work with the Congress and deal with this important piece of legislation.

I will be pleased to answer your questions at the appropriate time. Thank you very much.

[The statement of Mr. Garrish follows:]

STATEMENT OF THEODORE J. GARRISH
ASSISTANT SECRETARY FOR NUCLEAR ENERGY
U.S. DEPARTMENT OF ENERGY
BEFORE THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

AUGUST 10, 1988

Good morning Mr. Chairman. My testimony today will focus on current efforts to address the needs of both the United States uranium enrichment enterprise and the domestic uranium industry. As you are aware, recent efforts of the Congress and the Administration have dealt with this issue and several bills have been introduced which address the needs of the domestic uranium industry.

Energy security and national security provide strong motivation for maintaining an efficient, stable, and economically competitive uranium enrichment enterprise in the United States. Nuclear power contributes one-sixth of our Nation's electric power and is an important part of ensuring that Americans will have an adequate and reliable supply of electricity now and in the future. This supply of electricity, generated by 40 domestic utilities, and the domestic employment it ensures, require a secure, reliable, and economical supply of enriched uranium--free of the threat of foreign supply disruptions or price controls. In addition, foreign commercial sales of enriched uranium amounting to about $500 million each year aid in the Nation's balance of trade and contribute to the Nation's nuclear nonproliferation efforts through our involvement in the nuclear fuel cycle of foreign countries. Finally, important national security objectives are supported by the availability of a secure, dependable supply of enriched uranium at reasonable costs for U.S. naval forces and other defense programs.

Mr. Chairman, over the years, the Department has managed the enrichment enterprise in the most professional, businesslike manner possible. We have provided a stable, reliable supply of enrichment services to meet energy and national security needs. We have offered flexible contract terms and prices while continuing to meet our legal mandate to recover the Government costs. We have retired unneeded facilities, focused our research and development efforts, and increased sales. Our overall objective has been, and continues to be, to make enriched uranium of U.S. origin as economically attractive as possible to our customers.

These actions have proven to be effective in addressing some of the challenges that have beset the program. More remains to be done, however. The uranium enrichment and uranium mining industries still face serious problems today. Both face strong foreign competition and both are experiencing financial and economic hardships as a result of reduced demand. In addition, in the enrichment enterprise conflicting objectives, varied interpretations of the Atomic Energy Act, and the interplay of special interests have frustrated attempts to manage the enterprise in a businesslike manner.

The needs are clear. The enrichment enterprise needs to be provided with flexibilities characteristic of private industry. To compete more effectively, the enterprise needs market-based contract terms and prices, and continued minimization of long-term operational costs. The miners need a healthier, more robust industry through increased demand for domestic uranium, and mill tailings at active sites need to be cleaned up.

General legislative proposals have been introduced which address these needs. My comments today will present the Administration's position on these key issues.

THE URANIUM MINING INDUSTRY

Over the last 20 years, the U.S. Government has consistently recognized the importance of a domestic uranium industry to meet national security and energy security interests. However, this industry has experienced substantial changes that have contributed to a disturbing degree of instability. This effect has been reflected most visibly in the form of two boom and bust cycles. As a result of these market disturbances, Congress has proposed various forms of corrective measures for this industry to protect the Nation's interests.

The genesis of the initial boom and bust cycle occurred in the early 1950's, when the U.S. Government's needs to meet expanding military requirements were greater than the available capacity of the uranium industry. To rectify this situation, the U.S. Government instituted a production incentive program that in effect created both the domestic and foreign uranium producing industries. This incentive program was so successful, and stimulated so much production, that by the early 1960's, the Government was forced to cut back deliveries of uranium. The result was the first boom and bust cycle which resulted in a decline in demand for both uranium and uranium enrichment continuing until the late 1960's.

As the domestic uranium industry retrenched in the face of reduced demand, considerable attention focused on the most appropriate means to maintain its long term health and vitality. As a result, in 1964, Congress enacted Section 161v of the Atomic Energy Act, 42 U.S.C. 2201(v), directing the Atomic Energy Commission (AEC) to provide protection for the fledgling uranium industry by requiring that it restrict the enrichment of foreign uranium for domestic use "to the extent necessary to assure maintenance of a viable domestic industry." In doing so, Congress noted, "The maintenance of a viable domestic industry is an integral part of a sound nuclear industry and may, indeed, be closely intertwined with the defense and security interests of the United States" (S. Rep. No. 1325, 88th Cong., 2nd Sess. (1964)). This restriction contributed markedly to the subsequent resurgence of the domestic uranium industry.

Demand for both natural uranium and uranium enrichment increased in the late 1960's and the early 1970's following the over 200 orders for nuclear power plants in the U.S. At the same time, world demand was projected to grow dramatically. This, plus optimistic projections of reactor operational dates by the utilities, contributed to a significant increase in demand for both uranium and uranium enrichment. Additional impetus to increased purchases for domestic uranium by U.S. utilities in the 1970's involved the criteria promulgated by the AEC in 1966 implementing the congressional mandate to restrict domestic utilities from purchasing foreign-origin uranium for enrichment in the U.S. for domestic end use. This requirement was incorporated in all of the Department's uranium enrichment sales contracts with domestic utilities. Prior to 1984 a provision in these contracts specifically prohibited domestic utilities from importing foreign origin uranium for enrichment by DOE as authorized by the enrichment criteria.

In this period, U.S. uranium production increased from about 25 million pounds U308 in 1970 to over 40 million pounds by 1981. The domestic mining industry was reaching its maximum capacity and there was a rapid escalation in uranium prices and exploration activity.

The net result of all these activities was an expected prosperity for both the U.S. uranium and uranium enrichment industries. Due to this expected prosperity and the maturity of the U.S. uranium industry, the U.S. Government decided that restrictions on the use of foreign-origin uranium in domestic power reactors could be gradually reduced without adversely affecting the U.S. uranium industry. Therefore, a plan was announced to remove these restrictions beginning in 1974 with a total removal complete by 1984. It was felt that the health and vitality of both the uranium and enrichment businesses could be maintained in this environment.

The large growth projected for both the U.S. uranium and uranium enrichment industries did not materialize. Demand for electric power lagged behind the projected growth rate following the oil price shocks in 1973 and 1978 and the inflation that ensued. The lead times for reactor licensing and construction lengthened, and continuing escalation in labor, materials, and financing costs added significantly to the construction costs of nuclear power plants and those in the construction pipeline. Rising interest rates in an inflationary and uncertain U.S. economic environment further contributed to the problems of the electric utilities attempting to construct and operate nuclear power plants. In response to these developments, a sizeable number of planned nuclear power plants were either cancelled or postponed. This directly reduced demand for both uranium and uranium enrichment.

The market collapse for uranium in the 1970's caused a number of domestic producers to exit the business. One result was the abandonment of mill tailings at inactive sites with no residual responsibility traceable to the previous owner. This potentially hazardous situation was viewed by Congress as unacceptable and stimulated interest in a corrective course of action. Reflecting continuing concern for the public health and safety without burdening the domestic uranium industry, Congress enacted the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901-7942). As a result a Federal program was put in place to correct two major problems affecting the industry--the disposition of abandoned mill tailings sites and the clear assignment of responsibility for the cleanup of active sites to the then-current owner licensees. In a sense, this step discriminated between two classes of mill tailings owners--those who got out of the business before 1978 and those who didn't--the former being free of any further liability and the latter fully remaining and solely responsible. The Federal Government, with cost sharing with states, was charged with funding and execution of the cleanup of abandoned or inactive sites. This action corrected one important factor associated with the decline of the industry.

Unfortunately, the domestic industry continued to deteriorate and its problems were further exacerbated by discoveries of high grade, low production cost ore bodies in countries such as Canada and Australia. The decline of the U.S. mining industry involved dramatic decreases in employment, capital expenditures, operating plants and production levels as a result of a readjustment of commitments to purchase uranium. Also, the spot market price for U.S. natural uranium plummeted from $44 per pound of U308 in 1979 to about $17 per pound in 1987. This price reduction was directly related to both the lower price that foreign suppliers were able to offer due to their higher ore quality and the large existing stockpiles of natural uranium that were being sold on the secondary market. For example, the total uranium inventory held by U.S. utilities at the end of 1985 represented over 4 years of forward needs. The net result of the market reaction to this oversupply situation culminated in a reduction in market share in the United States for the domestic mining industry from 90 percent in 1981 to about 55 percent in 1986.

During this time period, congressional attention again focused on the problems of the domestic uranium industry. A number of steps were proposed and finally in 1982, Congress enacted section 170B of the Atomic Energy Act requiring the Secretary of Energy to determine the viability of the domestic uranium industry on an annual basis. With such a determination, the most appropriate corrective actions could potentially be identified. The enactment of section 170B instituted a review procedure to assure continued congressional oversight. Of particular concern was the volatile nature of supply and demand in the uranium market as evidenced in the past.

The decline of the domestic uranium industry was confirmed by three subsequent consecutive findings of nonviability in 1984, 1985, and 1986, by the Secretary of Energy as required by enactment of Section 170(B). Responding to congressional direction in 1982 to conduct a careful annual assessment, the Secretary found the industry nonviable as determined by two of the criteria by which the industry was to be measured--supply response capability and financial capability. Although slight improvement was noted in 1987, the basic indicators remain pessimistic regarding prospects for an early dramatic recovery.

It is against this backdrop that Congress and the Administration have labored to formulate some way of bolstering the beleaguered uranium industry. Legislation has passed the Senate and is being considered in the House which attempts to address the problem. However, it includes objectionable trade restrictions which the President would veto. This has led to efforts by the Administration to reach an accord with representatives of the mining and utility industries -- one which would offer a solution to the problem, consistent with the Congressional interest in assuring the viability of the industry but one also consistent with the Administration's free trade policies.

Some weeks ago, after lengthy discussions with the uranium industry, the Administration agreed, in concept, to support a proposal that would assist the domestic uranium industry in reestablishing its position as a viable competitor for sales of uranium. The proposed approach was directed toward the attainment of multiple goals--stimulation of demand for domestic uranium, timely attention to the need for mill tailings remedial actions at active sites, and establishment of a wholly-owned Government corporation to assume the responsibilities of the enrichment enterprise.

REVITALIZATION INITIATIVES

In addressing the issue of industry viability and the need for long-term stimulation of demand for the domestic uranium industry, the Administration has developed a package which is consistent with its commitment to free and open trade and at the same time would take strong and definite steps to provide a more viable uranium industry for our country.

This would be achieved in part by a uranium purchase program that would provide for a $750 million purchase program of domestic uranium. Purchases would be spaced over six years and the uranium would be made available to the proposed enrichment corporation for overfeeding. The net result would be a much needed stimulus to a stagnant industry by bolstering sales, employment and eventually exploration. Furthermore, this concept was intended to preserve the competitive position of smaller mining companies by initially providing for sales from them on a preferential basis and to help with capital formulation that would assist in the long term health of the industry once it was able to get on its feet. Both small and large mining businesses would subsequently benefit and thereby maintain a larger industrial base for uranium mining.

RECLAMATION OF MILL TAILINGS SITES

The proposal would also retain the program for mill tailings clean-up contained in the Senate and House bills. The Department recognizes that the cost associated with tailings reclamation at active sites represents a major issue for many in the uranium industry.

S.2097 and its companion bill in the House, H.R. 4489, address this important problem area for the uranium mining and milling industry. The proposed legislation would retain with the owners of active sites the responsibility for one-third of these reclamation costs and for all costs above an inflation-indexed upper limit. The Department would support efforts to encourage licensees to complete the remedial actions for which they are responsible.

URANIUM ENRICHMENT STRUCTURAL CHANGES

One of the goals of the Administration is to transfer to the private sector those Government functions that can best be performed by the private sector. The uranium enrichment enterprise has all of the key commercial characteristics for privatization. At this time, the Executive Branch is prohibited from studying or proposing privatization for the enrichment business. However, based on previous studies, the Administration continues to believe that the uranium enrichment enterprise should be restructured as a more commercially oriented entity.

To accomplish an effective transition from a Government-managed program to a private sector organization, the uranium enrichment business, first and foremost, must be healthy, profitable, and well managed. A major step in this direction would be accomplished under Title III of the legislation currently under consideration by establishing a wholly-owned Government corporation for uranium enrichment. Such an entity, with a corporate-like structure, stock held by the Treasury, and increased flexibility in marketing, contracting, management, and administration could begin the process of establishing a more stable, commercially attractive business.

Operation in this mode would also provide time to prepare for the transition to full privatization by addressing issues such as Nuclear Regulatory Commission licensing. In the future, stock could be sold to the private sector and a private corporation established. The issuance of stock, reflecting the Government's investment in the enrichment enterprise, and its eventual sale can serve as an effective vehicle to ultimately privatize this enrichment enterprise. This could offer an opportunity to maximize the return on the Government's investment.

Creating an efficient mechanism for recovery of the Government investment by authorizing the issuance of stock represents just one of the benefits of providing the Government corporation with features more characteristic of a private business. Other features of a proposed Government corporation that are essential to its success include self-financing authority with the ability to borrow from the public for project financing, marketing independence and flexibility to effectively compete in the marketplace, and having the enrichment corporation subject to NRC, EPA, OSHA. Similarly, any final legislation should be amended to include a private sector type board of directors, subjecting the corporation more immediately to NRC, EPA, and OSHA jurisdiction, having the uranium revitalization fund and the corporation subject to apportionment, and eliminating legislative bypass authority.

The uranium initiatives we have proposed, coupled with the restructuring of the uranium enrichment enterprise, would significantly enhance these two key nuclear industries. They would help ensure a substantial sales base and provide the basis for financially strong companies in the uranium enrichment and uranium mining and milling industries. They would provide increased pricing flexibility for the uranium enrichment enterprise to meet foreign competition, and permit the flow of substantial dividends to the U.S. Treasury. They could also provide the opportunity for lower nuclear fuel costs to utilities, which could be passed through as rate decreases to ratepayers. This legislation would effectively solve a longstanding issue plaguing the U.S. mining industry. The net effect of these benefits would help strengthen the national and energy security of the United States.

We believe this proposal, with the modifications we have proposed, represents a sound, effective approach to the problems confronting the U.S. mining industry and the enrichment enterprise -- one that is consistent with free and open trade. In addition, it would provide the potential for maximum return on the Government's investment in the enrichment enterprise on a timely basis.

CONCLUSION

The Administration's proposal provides much needed revitalization to ensure the future health and vitality of two key nuclear industries. The Administration supports, with the modifications previously mentioned, freestanding legislation, such H.R. 4934 and H.R. 4975, to implement this proposal.

Restructuring the enrichment enterprise and revitalizing the U.S. mining industry is highly desirable. It offers a solution to a longstanding, difficult, and contentious problem for the uranium industry. It would help ensure a strong sales base and financial strength for both the uranium and enrichment industries. It would provide the opportunity for maximum return to taxpayers on the Government's investment in enrichment. It would facilitate resolution of environmental issues on uranium mill tailings. And, finally, it is compatible with free and open trade.

Legislation to restructure the enrichment business and revitalize the uranium mining industry makes sense. It is good for the nuclear industry. It is good for the country. Timely, decisive action by the Congress is needed. The Administration encourages the Congress to enact legislation consistent with its recent proposal. We would like to work with Congress to refine details as necessary to complete this important action. Your active support, Mr. Chairman, is critically important.

Mr. GIBBONS. Thank you, sir.

Now, may we have our second Government witness, Mr. Trier.

STATEMENT OF DANA L. TRIER, TAX LEGISLATIVE COUNSEL, U.S. DEPARTMENT OF THE TREASURY, ACCOMPANIED BY JUDITH HIPPLER BELLO, GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Mr. TRIER. Thank you, Mr. Chairman.

I am Dana Trier from the Treasury Department. What I would like to do in my testimony this morning is confine my remarks to some of the tax issues that are raised by this proposed legislation. On balance, we think really very few tax issues are raised, but let me briefly summarize them for you.

The first and most important thing to us in analyzing this legislation is the determination of whether the required contributions to this fund constitute something in the nature of an excise tax or a tax generally. Because if they did, we in the administration could not support this legislation.

Our conclusion is that conceptually these contributions are best analyzed as user fees that are paid as the outcome of a settlement of a complex dispute, and which reflect the benefits that are accruing, directly or indirectly, to the people paying the user fees. As you know, the mining industry is making a major contribution here, and the mining industry, to the extent that they agree to be part of the cleanup program, is making a major contribution to this fund. And the utility industry is making a larger one. And our analysis of what those contributions are would be simply that they are in the nature of user fees, or in a sense the quid pro quo for benefits that those sectors of our economy have realized from this.

There are also a couple of other tax interpretive issues that do not at all affect our thinking about whether we support the legislation or not, but which we think that it is appropriate to bring up at this point in the legislative process for the committee to consider as refinements to the bill are made.

One is an important issue that has developed over the years with respect to all matters like this: Who is going to actually be collecting the fees? It is not absolutely clear from the legislation itself who would be. We would say, however, that in our view, even though it is generally a good collector of money, the Internal Revenue Service would not be the appropriate collection agency in this case.

Second, we note that this legislation was not drafted apparently to be under the Trust Fund Code, which is part of the Internal Revenue Code and which has a variety of provisions that deal with various funds of this type; for example, the Superfund, of the hazardous waste liability fund. And we believe it is appropriate to consider specifying that this fund is set up under that code which was obviously designed to deal and regulate funds of this type.

A final set of issues relates to just precisely how the fund and the corporation are treated for tax purposes. We believe on balance that we in the Treasury Department could determine what the proper treatment is. We just believe it is important that there be no implications one way or another about the treatment of this.

We think the corporation ought to be taxable, and we would presume, based on the draft of the bill, that it would be. We also believe that the contributions both by the utility industry and the mining company ought to be determined under general tax principles. There is some language in the legislation with respect to the utility portion of it that would indicate that these fees are intended to be viewed as for fuel costs. That may be taken to determine their Federal income tax treatment. And we would propose that that not apply for tax purposes, that rather under general principles, this would be analyzed as a cost of doing business relating to whatever it relates to, which in this case may be various liabilities other than fuel costs.

But on balance, although we think there are these various interpretive issues, the administration, as Mr. Garrish said, supports this legislation. As to the principle issue, the issue of whether the fees that would be collected constitute taxes, our determination is that they would not, as we view the definition of taxes.

Thank you very much.

[The statement of Mr. Trier follows:]

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STATEMENT OF
DANA L. TRIER
TAX LEGISLATIVE COUNSEL
DEPARTMENT OF THE TREASURY
BEFORE THE
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

Mr. Chairman and Members of the Committee:

I am pleased to have this opportunity to present the views of the Treasury Department regarding several bills designed to revitalize the uranium industry of the United States, to provide for the cleanup of various mining sites, and to modify the enrichment program currently run by the Department of Energy. As you know there have been three separate bills introduced in the House to achieve the above purposes. Two of these bills, H.R.4934 and H.R.4975 are nearly identical. I will begin my testimony with the third bill, H.R.4489.

H.R.4489

The Treasury Department opposes H.R.4489. Title I of the bill would impose a fee on the use of foreign uranium by civilian nuclear reactors. This provision would violate the pending Free Trade Agreement between the United States and Canada, as well as the General Agreement on Trade and Tariffs ("GATT"). Robert Reinstein of the Office of the United States Trade Representative stated in testimony on June 28, 1988 before the Subcommittee on Energy and the Environment of the Committee on Interior and Insular Affairs that "the provisions of Title I would be inconsistent with the [Free Trade] Agreement, as well as with Article III of the GATT, and that the President's senior advisors would recommend a veto of any bill containing this provision." Thus, the Administration and the Treasury Department oppose H.R.4489.

H.R.4934 and H.R.4975

I would like to now turn to H.R.4934 and H.R.4975. These two bills, which are for all practical purposes identical, would enact the Uranium Revitalization, Tailings Reclamation and Enrichment Act of 1988 (the "Act"). I will refer to these bills collectively as the "Act."

The Administration supports this proposed legislation, with certain modifications, as a reasonable compromise of the competing interests involved. These modifications include provision of the proposed government corporation with a private sector-type board of directors, expanded authority to borrow from the public for its project financings and independence and flexibility to market its product effectively; subjection of the corporation to NRC, EPA, and OSHA regulations; application of apportionment to both the Uranium Revitalization Fund and the proposed corporation; and elimination of legislative bypass authority.

Moreover, the Treasury Department believes that, from a tax policy perspective, the Act represents a far sounder approach to implementing the significant compromises it embodies than that taken by H.R.4489. However, we also believe it is appropriate for Congress to consider clarifying several ancillary tax issues raised by the proposed legislation.

Background

As the Committee is aware, among the purposes of the Act is the resolution of two major disputes that have arisen among miners and users of uranium and the United States government. One of these disputes concerns the relative liability and responsibility of uranium miners, the utility industry, and the federal government for cleanup and reclamation of uranium mining sites across the country. The other major dispute concerns the liability of the utility industry for unrecovered costs of the uranium enrichment program run by the federal government.

The Act would establish a Uranium Revitalization Trust Fund (the "Fund" or "Uranium Fund") to achieve a number of goals, including funding a program for the purchase of domestic uranium and the mine tailings cleanup effort. The uranium and utility industries would both make contributions to the Fund, as discussed further below.

In addition the Act would also establish the United States Enrichment Corporation, which would be a government-owned corporation. The Corporation would take over the uranium enrichment program from the Department of Energy, and would also support the Uranium Fund. The Department of Energy would transfer most of its existing uranium enrichment facilities to the Corporation. The Corporation would issue capital stock to the United States representing an equity investment equal to the book value of the assets transferred to the Corporation. The Corporation would pay dividends on its capital stock out of earnings, unless there is an "overriding need" to retain those funds for corporate purposes. The Corporation would have an "initial debt" to the United States of $364 million dollars, required to be repaid over twenty years. However, this debt will be reduced by $300 million of the payments made by the Corporation to the Uranium Fund over the next five years, so that the initial debt will be reduced to $64 million. The United States would be prohibited from selling the stock of the Corporation without further legislation. Nonetheless, we understand that the eventual privatization of the Corporation is a goal of the legislation.

My testimony here today will focus on the tax policy implications of the proposed legislation. The Administration supports this proposed legislation with the modifications described above. I will not, however, discuss the diverse liability, energy, and environmental issues addressed by the Act, which are being fully discussed in the testimony of the Department of Energy. I will instead focus on four aspects of the proposed legislation: the reliance on user fees; collection of the taxes; the application of the Trust Fund Act; and certain potential tax interpretation issues.

User Fees

From a tax policy perspective, the most attractive feature of the Act is that the proposed Uranium Fund would be funded by what might be appropriately termed "user fees," rather than taxes levied on the general public. There are to be two major sources of private contributions to the Fund: the mining industry and the utility industry. Moreover, through the United States Enrichment Corporation, the federal government will provide additional support. In addition, states in which mining sites are located are permitted to make voluntary contributions to the Fund, although it is possible that few, if any, such voluntary contributions will be made.

The largest component of the funding is to be $1 billion contributed by the utility industry. Licensees for civilian nuclear power reactors would contribute to the Fund by means of a fee of $72 per kilogram of uranium contained in fuel assemblies initially loaded into each civilian nuclear reactor during each year, commencing January 1, 1988. The fee applies to the use of either foreign or domestic uranium. The fee will continue to be payable until the $1 billion figure is reached. It is anticipated that it will take five or six years for the fees to accumulate $1 billion. No specific cutoff date for the contributions is provided, so that if the $1 billion figure is not reached as quickly as anticipated, utilities will continue to pay until it is reached. Because utilities using the nuclear fuel are direct beneficiaries of the programs supported by the Fund, it is appropriate that they should bear financial responsibility under the Act in proportion to their use of nuclear fuel.

Mining companies are required to contribute to the Fund only if they elect to participate in the cleanup program under the Act with respect to active mining sites listed in the Act. If they do so elect, contributions are to be $2,000,000 per active site, $1,000,000 of which is to be contributed by January 31, 1990, and $1,000,000 of which is to be contributed by January 31, 1991. Mining companies are also to contribute $.50 by January 31, 1992 and $.50 by January 31, 1993 per dry ton of tailings produced by mining activities prior to the effective date of the Act. Total contributions by the mining industry are estimated at $300,000,000. It is also appropriate that producers of uranium should assist in financing the Uranium Fund if they benefit through participation in the cleanup program, and that the contributions of participating producers are to be measured by the number of their active sites and the amount of tailings at each active site.

The United States Enrichment Corporation established by the Act will also provide $450,000,000 in support to the uranium Fund. This contribution is to be made through $90,000,000 payments each December 15 from 1989 through 1993. $60,000,000 of each $90,000,000 installment is to be credited against the "initial debt" of the Corporation to the United States Treasury. Furthermore, since the United States will be the sole stockholder of the Corporation, any payments made by the Corporation reduce the value of the federal government's equity in the Corporation.

Collection By the Internal Revenue Service

Although the Administration supports this proposed legislation, we also believe that it is appropriate to clarify that the fees to be charged under the Act would most appropriately be collected by the Department of Energy rather than the Internal Revenue Service. The Act does not currently specify which agency would be responsible for collection. Certain types of user fees or excise taxes are collected by the Service because collection would be impractical for an agency not generally involved with tax collection. An example would be excise taxes on trucks or tires; it would not make sense for the Department of Transportation to collect such taxes. In this case, however, the involvement of the Department of Energy in the enrichment of uranium and the supply of nuclear fuel to civilian reactors would indicate that the Department will be able to effectively carry out collection of the fees due pursuant to the Act. It may not be necessary to have a specific provision in the Act concerning the role of the Service in collecting the fees, but some type of indication of Congressional intent on this point would be helpful.

Establishment Under the Trust Fund Code

The Fund would in some respects resemble other federal trust funds that have been set up for various purposes, such as the Hazardous Substance Superfund, the Leaking Underground Storage Tank Trust Fund, and the Vaccine Injury Compensation Trust Fund. Unlike these other funds, however, the Uranium Fund is not established under the Trust Fund Code, a subtitle of the Internal Revenue Code. Although the Fund may not have been intentionally excluded from the Trust Fund Code, under the Act it would be codified as part of the Atomic Energy Act, not the Internal

Revenue Code. Thus, the Fund would apparently be excluded from the coverage of the Trust Fund Code. Since the Fund is to be "established in the Treasury of the United States", we believe it would be appropriate to consider establishing the Uranium Fund under the Trust Fund Code.

In this regard, we note that some of the Act's provisions would be inconsistent with provisions of the Trust Fund Code. First, The Trust Fund Code requires that "the amounts appropriated... to any Trust Fund shall be transferred at least monthly from the general fund of the Treasury." Code section 9601(a). This rule would not be satisfied with respect to the Uranium Fund as contemplated under the Act, which would require payments to the Fund to be made annually by each of the parties required to pay into the Fund. It would seem that if the purposes of the Uranium Fund are better served by annual payments, there is no overriding reason to impose monthly payments. Thus, if the Fund were to be established under the Trust Fund Code there would need to be a modification of the rules of section 9601(a) for purposes of the Uranium Fund.

Second, the Act provides that moneys in the Fund would be invested in a manner differing from the investment program applicable to other funds under the Trust Fund Code. Code section 9602 provides that it shall be the duty of the Secretary of the Treasury to invest the portion of any trust fund that is not, in the Secretary's judgment, necessary for current withdrawals. The Act would grant the authority to determine the amount of the Uranium Fund to be invested in any particular year to the Secretary of Energy. It is not clear why this particular fund should be handled differently from those funds pursuant to the Trust Fund Code. If it is appropriate for the Secretary of the Treasury to determine the amount to be invested under the Vaccine Injury Compensation Fund, the Oil Spill Liability Trust Fund, or the Black Lung Disability Trust Fund, then it would seem that it would be appropriate that the Secretary of the Treasury should manage the investments of the Uranium Fund to a like degree.

The Act also provides additional specific rules concerning the investment of moneys in the Uranium Fund which differ slightly from the general trust fund rules. Section 9602 provides that investments under the Trust Fund Code may only be made in interest bearing obligations of the United States. The Act likewise provides that the investments of the Uranium Fund can be made only in interest-bearing U.S. obligations, but investments will be restricted to those that the Secretary had determined to be of appropriate maturity for the needs of the Fund. The Act also provides that the interest rate on the U.S. obligations in which moneys of the Fund are invested "shall not exceed the average rate applicable to existing borrowings." It is not clear exactly what this restriction means. The phrase "existing borrowings" is nowhere defined. It apparently could refer to borrowings of the Fund, or to borrowings of the U.S. government. It may be that the purpose of the restriction is to restrict the profit the Fund earns at the expense of the U.S. government. In any event, the restriction might well hamper proper fiscal management of the Fund, and we therefore believe that consideration should be given to deleting it.

In summary, we do not see compelling reasons for having different investment rules for the Uranium Fund than for other federal trust funds. Thus, it appears appropriate that if enacted the Act should establish the Uranium Fund under the Trust Fund Code.

Potential Tax Issues

We should also note that there are several collateral tax issues potentially raised by the proposed legislation. First, we note that the tax treatment of the fees paid is not entirely clear. The Act provides that the fees paid by licensees of civilian nuclear reactors are to be considered "as a component of fuel cost for accounting and regulatory purposes." It is not clear if this provision is also meant to require that the fees be treated as part of fuel cost for federal tax purposes as well. Although the language does not specify the tax treatment of the fees, the broad language might be interpreted to require this result. We would oppose such an interpretation. The purpose of the fee is not to pay for the acquisition of fuel but to compensate the U.S. government for unrecovered costs of prior enrichment activities and to fund cleanup of the tailings resulting from the mining of fuel used in prior years.

We believe it is appropriate for the tax treatment of the fee to be determined through the normal process of determining the federal tax treatment of any other payment; that is, through regulations or by means of private or public rulings that address the issue in a specific factual context. We believe that the same logic applies to the determination of the federal tax treatment of contributors to the Fund by the mining industry.

Second, it appears that the Corporation would be subject to federal income tax, although this is not explicitly stated in the bill. Under the Internal Revenue Code, federal instrumentalities formed by an act of Congress after 1984 are exempt from federal income taxation only if the exemption is specifically provided under the Internal Revenue Code. Therefore, the Corporation would be subject to federal income tax, and it might be wise to have the Act or legislative history clarify this point.

Finally, several state tax issues are raised by the Act. Under the Act the Corporation would be exempt from state and local taxes of any sort. The Act does provide, however, that the Corporation is to make payments in lieu of taxes to state and local authorities.

This provision raises a number of issues. The payments in lieu of taxes are intended to approximate the amount that would be payable by private industrial firms owning similar facilities and engaged in similar activities, except that no payments are to be made in lieu of taxes imposed on net income. Some jurisdictions impose gross receipts type taxes. It is not clear why the Corporation should make payments in lieu of a gross receipts tax but not of an income tax. The Act would also provide that in no event would the payment in lieu of taxes be less than the amount payable as actual taxes calculated as if the transfer of properties had not occurred. Despite this mandatory minimum, the Act provides that the Corporation will have absolute discretion to determine the amount of tax payable. It is arguably inconsistent to have absolute discretion coupled with the mandatory minimum.

Finally, I would like to note the possible ramifications of a provision that includes certain contractors within the scope of the state tax exemption. In providing the Corporation's exemption, it is stated that "the activities of the Corporation for this purpose shall include the activities of organizations pursuant to cost-type contracts with the Corporation to manage, operate, and maintain its facilities." The proposed legislation goes on to provide that this exemption is not intended to exclude income of the Corporation's contractors from state or local income taxes. This provision appears to be aimed at cases which have held that federal contractors may not rely on the federal government's exclusion from state and local taxes. In United States v. New Mexico, 455 U.S. 720 (1981), the Supreme Court held that, despite the use of cost-type contracts, Atomic Energy Commission contractors were liable for gross receipts and sales taxes imposed by the state of New Mexico. The Court held that constitutional immunity from state or local taxes exists only where the contractors are "so closely connected to the government that that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned." Id. at 735. The Court found that the use of cost-type contracts did not result in such an inseparable relationship. Numerous other cases have considered the liability of federal contractors for state and local taxes.

The extension of federal tax immunity to the Corporation's contractors must be considered in light of this background. It may be appropriate in certain cases for federal contractors to be treated as instrumentalities of the federal government for purposes of state and local taxes, and it may be that Congress will determine that the Corporation's contractors should be so treated. However, it is important that the background and possible collateral consequences of such a provision be understood and considered before such a provision is enacted.

CONCLUSION

The Treasury Department supports the legislation proposed in H.R.4934 and H.R.4975, with the modifications described previously. Although a number of collateral issues are raised by the bills, we believe that on balance the bills represent a reasonable approach to the issues intended to be resolved by the legislation.

This concludes my prepared remarks. I would be pleased to respond to your questions.

Mr. **Gibbons**. Thank you.

The note that I inherited from the chairman says that Mr. Schulze was the first one here, and he is the first to be recognized. Mr. Schulze.

Mr. **Schulze**. Thank you, Mr. Chairman.

Gentlemen, since the administration does support this, perhaps you can explain to me about title 3 of the bill, which apparently writes off all but $364 million of the $9 billion in unrecovered costs which the GAO has repeatedly indicated the Federal enrichment program owes the U.S. Treasury. Do either of you want to address that?

Mr. **Garrish**. Yes, I would be happy to discuss that with you.

There is a large question, and this has been a fairly controversial issue as to whether or not there is, in fact, a debt for this corporation, and what is the appropriate amount for that debt. The figures have ranged from $364 million to roughly $3.2 or $3.5 billion, and even up to $7 to $8 billion.

Now let me try to explain some of the facts behind those numbers. In a cash flow analysis you determine how much the Government has actually spent versus net revenues received. The net amount is $364 million that the Government has spent more than it has received. And that includes all of these various facilities.

Now, if you take that, add interest and other accounting entries for the full period of time that these moneys have been spent, you come up with a number of approximately $8 billion.

Mr. **Schulze**. In other words, you are saying this money was either loaned or given without interest?

Mr. **Garrish**. That is correct. There are appropriated funds into the program, and at the same time the enterprise sells SWU's, which is the ultimate product that it produces, to the private sector and received revenues back for the sale of that product. In terms of the net between those two numbers, it is approximately $364 million.

Now, a number of these expenditures over the years——

Mr. **Schulze**. Let me interrupt you right there. Is there any other industry that we do the same thing to, any other metal industry that we do that to?

Mr. **Garrish**. There is always a question in terms of the amount expended in a private corporation, for instance, as to whether or not you include interest or not.

Mr. **Schulze**. In the metals field, are there any other areas where we put in no interest or give appropriations to corporations for which there is no interest charged?

I am trying to say, if this is a general practice, that is one thing. If this is a solely unique operation, then I might view it in a different light.

Mr. **Garrish**. The question is do you include investment and interest. In other words, when you have a corporation or when you have an enterprise, and you put——

Mr. **Schulze**. No, that is not my question. My question is: Are there other parallel examples of doing this in the metals or minerals field?

Is there anybody else we do this for? If we do and it is a general practice, then I am more inclined to go along with you. If it is the only one we do, then perhaps interest should have been paid.

Mr. **Garrish**. Well, let me put it this way: This is a relatively unique undertaking by the Government in that this has been a Government enterprise to provide these services. So the question is: Is this a Government service or is this a private sector service? And it has always been one of those difficult sorts of animals which has been kind of difficult to define. And that is the problem that we face in this.

Mr. **Schulze**. Would it be more efficient for the Government just to take over the operation totally?

Mr. **Garrish**. Well, the Government does now own the operation and does operate the enrichment enterprise. Now, what we are trying to do is move it into the private sector and have the advantages of a private sector-type business——

Mr. **Schulze**. The Government owns all these mines? How many mines are left?

Mr. **Garrish**. The Government does not own the mines. It owns the uranium enrichment enterprise, which is the subject of title 3. It does not own the mines.

Mr. **Schulze**. That is my question. Would it be more efficient, if we are talking about 2,000 workers and forgiving this amount of money, plus pouring in an additional $1.4 billion or whatever it is—would it not be more efficient if the Government, either by eminent domain or something, just said we are going to take this operation over?

Mr. **Garrish**. Well, at one time——

Mr. **Schulze**. As bad as the Government operates and as much money as we lose, it sounds like this operation has been a little bit worse or lost a little bit more than anything we could have done.

Mr. **Garrish**. Congressman, I have to take some issue with a couple of your points. No. 1 is I do not think that our approach is to forgive——

Mr. **Schulze**. I am not trying to make points. I am asking questions.

Mr. **Garrish**. OK. But in terms of whether or not the enrichment enterprise is a money loser or a money gainer, it has not been a money loser.

Mr. **Schulze**. Oh, it has not? It is a profitable operation, then.

Mr. **Garrish**. There has been a net cash-flow on this of $364 million.

Mr. **Schulze**. Great.

Mr. **Garrish**. This has been a very favorable enterprise for the Government in terms of what it has done in the past, and it has great potential in the future.

Mr. **Schulze**. Where does our problem come in, then, if this has been a profitmaking—why are we here?

Mr. **Garrish**. It comes over who is the most appropriate party to run this? Do we need to have it run by the Government, or should the private sector run it?

Mr. **Schulze**. Cannot that be decided without us putting in money? Is that not just a matter of changing ownership or something?

Mr. **Garrish**. Yes, that could be. I mean, we would support the idea of moving this into the private sector. Yes, that could happen, and we would encourage the Congress to look favorably on that kind of proposal.

Mr. **Schulze**. We have had testimony that Canada has been subsidizing their domestic industry. Do you gentlemen agree with that, that there has been $2 billion worth of subsidization?

Mr. **Garrish**. They have received some incentives through their tax laws, through low interest loans, and a number of other techniques. I cannot give you a specific amount.

Mr. **Schulze**. It is not a question if you agree. We have had testimony here that the Canadian Government has subsidized the domestic industry. Is that factual, in your opinion?

[Pause.]

Mr. **Schulze**. We have no answer. Now, let me ask this then——

Mr. **Garrish**. Well, to the extent to which——

Mr. **Schulze** [continuing]. Has there ever been filed an antidumping or a countervailing duty suit or case against the Canadian industry?

Mr. **Garrish**. Not to my knowledge.

Mr. **Schulze**. Does it make sense that if there was a subsidy going on, that the domestic industry was being injured, that they would file such a suit?

Mr. **Garrish**. To the extent to which there are problems in the future that would occur from unfair trade practices, it is the intention we would look on those on a case-by-case basis. They could be filed by the private sector, and they would be evaluated by the appropriate parties.

Mr. **Schulze**. I guess I am confused again, Mr. Garrish. We are talking about the state of the industry right now, and from what I hear it is disastrous. Is that correct? And yet you say it is a profitable operation and things are going pretty well.

Mr. **Garrish**. No——

Mr. **Schulze**. And that we have not had to file any cases, and yet the other people say that we are on the fringe of evaporation.

Mr. **Garrish**. There are two issues. One has to do with uranium enrichment enterprise, which is operated by the Government as a service to the utility industries. And that is for the enrichment of uranium. That has been a very healthy program, and it has had its problems of late because of a number of factors. But, overall, it has not been a bad program for the Government. That is a separate program from the uranium mining industry that has suffered two boom-and-bust cycles over the years.

The uranium mining industry originally was a program that was tightly controlled by the Government, and over a period of years, it was allowed to be more in the private sector. And it has had two boom-and-bust cycles in the last several years.

Now, that is the industry I think you are comparing with the Canadians.

Mr. **Schulze**. Well, I do not want to dominate this. Let me ask just one or two more questions.

Mr. **Gibbons**. We would like to get Mr. Flippo if we can.

Mr. **Schulze**. Do we have a stockpile of uranium?

Mr. **Garrish**. Yes, we do.

Mr. **Schulze**. How is our national defense stockpile of this item? Tell me a little something about that.

Mr. **Garrish**. We have a stockpile of approximately 77 million pounds of uranium.

Mr. **Schulze**. How long should that last us?

Mr. **Garrish**. Twenty to 30 years for the Defense Department.

Mr. **Schulze**. Thank you. That is all.

Mr. **Gibbons**. Mr. Flippo?

Mr. **Flippo**. Thank you, Mr. Chairman.

Mr. Trier, I find it interesting that you say conceptually it is not a tax, and I was wondering if you could differentiate the economic impact of a tax or whatever this is. Does this have the same economic impact on those that are paying it as a tax?

Mr. **Trier**. I think the key point is the link between the tax and the benefit. If you and I, for example—just to take the most obvious example—pay our general income tax, we are paying an amount that is going into the Treasury, that is part of the overall Treasury fund, and we will benefit from it. But we are not going to benefit from it directly. It is going to go to all the uses that the Federal Government puts to us.

The other side of the coin is what we would view as a user fee, where there is a very direct relationship between the amount that, in effect, the Federal Government is imposing and the tax.

Now, in terms of money out of pocket, there is a money out of pocket.

Mr. **Flippo**. But to the extent that there is not that relationship between the beneficial aspects as you describe it and those that are paying the tax, then would it not have the same economic—I mean, they do not have any choice as to whether or not to pay it, do they?

Mr. **Trier**. Well, the utility industry does not, and the mining industry, to the extent that they participate in the cleanup program——

Mr. **Flippo**. I am sure you have heard of the phrase: A rose is a rose is a rose. It sure looks like a tax, if it walks like a tax, and quacks like a tax, it is a tax.

Mr. **Trier**. Well, that is because you are a smart tax person, and you see something called a fee and you start looking for taxes. But I think this is a contribution to a fund. I do not have the expertise that Mr. Garrish has, but it is part of a settlement of a complex set of circumstances.

Mr. **Flippo**. OK. Thank you.

Mr. Garrish, let me ask you: Would this corporation that was established be required to borrow its money from the Federal Financing Bank as other Government corporations are required to do today? Or is that a special exception for this particular industry?

Mr. **Garrish**. No. It would be prohibited from that technique.

Mr. **Flippo**. So this makes it entirely different than the FFB and all other Federal Government corporations that exist at this time?

Mr. **Garrish**. The attempt would be to put it in as much a private sector entity as possible.

Mr. **Flippo**. OK. Well, then, let us look at the board then. How is the board appointed in this particular instance?

Mr. **Garrish**. The advisory board is appointed by the President.

Mr. **Flippo**. By the President.

Mr. **Garrish**. And it is administered by an administrator who is appointed by the President and confirmed by the Senate.

Mr. **Flippo**. Mr. Chairman, I have some other questions, but I realize the essence of the time. I will refrain at this time because of the vote, but there are some very important questions that should be explored here.

Mr. **Gibbons**. We will be forced to recess. I would ask you to chair the hearings if Mr. Stark does not come back. Would you do that? I have to go to the Rules Committee.

Before I leave, let me ask you a couple questions. I do not know why this industry is in such dire straits to seek this kind of remedy. I am not familiar with it, I have to admit. But as I understand it, there are 106 fission plants in operation in the United States. And the Government has bought an awful lot of uranium for its military purposes.

Why, then, are we, in effect, being asked to bail out this industry?

Mr. **Garrish**. Well, when the uranium mining industry began, it began basically totally controlled by the Government with incentives for the production and the discovery of uranium ore. And what happened was this was at a time when the needs and the expectations of our society and our economy indicated to us that we would have over 200 or more plants in operation.

Mr. **Gibbons**. So it is a question of just having made an incorrect business decision, overoptimism followed by reality, followed by financial strain? Is that what the problem is?

Mr. **Garrish**. Well, but in many respects, the Government led this optimism and encouraged these companies into business. And over a period of time, we have had some cutback in the number of nuclear plants. As you know, it has had a period in which plants have been canceled, and the expectations of the Government and the expectations of the private industry have not kept pace with reality.

Mr. **Gibbons**. Well, you know, it is kind of like this. I got a letter from a retired officer down in my district the other day, and he said that the Government had promised him a golf course to play on real cheap. And I wrote him back, and I said, "Colonel, I was in the Army a long time, and I do not ever remember us promising any golf courses."

Now, I do not know. Were these explicit promises this Government made or what?

Mr. **Garrish**. It was the policy of the United States in 1964, when it passed 161(v) of the Atomic Energy Act, to maintain a viable domestic industry as a part of the economy and an integral part of the domestic security of the United States. That was a requirement.

Mr. **Gibbons**. Well, I was here in 1964.

You find that kind of language in many pieces of legislation. We vowed to end poverty. We vowed everybody would be literate. We have made all kinds of statements like that, but, you know, I don't recall any great discussion that we specifically promised prosperity for this industry. As I recall, the industry wanted some independence, and they got it. Now they are in here asking us to bail them out.

Mr. GARRISH. Congressman, part of this statement also went along with the provision in the Atomic Energy Act that required the Government to guarantee the viability; and if——

Mr. GIBBONS. That language may appear in the act, but really how is the Government in a position to guarantee an industry's viability? You know, we give industry a push and a boost, and hope it can perform. But we did not intend to become a socialist state.

I understand why the electric utilities want to get fuel as cheap as possible. All of us want to get our electricity as cheap as possible. We would like to get it free if we could. But I think we just have another case of overexpectation here.

Why should we bail them out with this legislation?

Mr. GARRISH. Well, part of the reason is that each of these parties bears some responsibility for this problem. In other words, it is not that the miners are going to receive payments and not have to pay anything. They have to pay a share of this. The utilities have to pay a share of it. They have to pay a billion dollars.

The one entity in the whole equation that has to pay the least is the United States. They have to pay——

Mr. GIBBONS. Why should we have to pay anything?

Mr. GARRISH. I am trying to suggest, Congressman, that they have to pay nothing. The Uranium Enrichment Corporation has to put a sum of $450 million into this, but they receive power savings equivalent to that amount. So on balance, their net contribution is virtually none.

So what I am suggesting to you is that this is not a matter in which the United States is paying for it, subsidizing an industry. The contributions are being made by other parties, and this settles the responsibilities over the years that each of the parties has had to deal with this problem.

Mr. GIBBONS. Well, couldn't we just get out of this mess by saying here is our stock, you can do whatever you want to with it?

Mr. GARRISH. Well, we would like to have that stock sold and have the benefits return back to the United States.

Mr. GIBBONS. Well, there is obviously a whole lot in this I do not understand.

Let me ask Ms. Bello a question. Do any of these proposals violate any of the agreements that we have now or are pending, such as the Canadian free trade agreement?

Ms. BELLO. No, Mr. Chairman. Neither of the bills introduced most recently by Congressmen Cheney or Richardson poses any problem under the GATT or the FTA. There was an earlier bill introduced by them which did create a substantial trade policy problem, but there is no problem in the current bills H.R. 4934 or H.R. 4975.

Mr. GIBBONS. Good. Fine. I apologize to you gentlemen. Obviously, there is a lot here I do not understand. I will study the issue some more.

Unfortunately, I have got to appear before the Rules Committee, and I have got about three minutes to get over and vote on something. I will try to be better prepared on what I vote on than I am on this subject, but I will study this subject further. And if you will just wait a minute here, Mr. Flippo will be back.

[Recess.]

Mr. **Flippo** [presiding]. The committee will resume its hearings, and the full committee chairman will return shortly.

But until he does, let me proceed with a question or two that I had.

Mr. Trier, I'm still, and I won't belabor the point too much because I suspect that there is not a great additional information that needs to be brought out.

But isn't it really true that the definition of a user fee is in those instances where the user causes the Government to incur some costs generally for which the user fee is applied to recover? Isn't that generally the definition of a user fee?

Mr. **Trier**. On the user of property, I would agree, sir.

Mr. **Flippo**. So, while it's a nice term to look at it conceptually, it has the same economic impact as a tax. And, in particular, because the utility has no choice as to whether or not it is paid in that it ultimately winds up in the utility bills of the ratepayer because they do have to recover the cost, and in the fact that the people paying the fee are not causing the Government to incur any cost over which one could be called a user fee.

So it doesn't fit the tradition. Maybe it does fit a word "user fee," but not the traditional definition of a user fee.

Mr. **Trier**. I would agree that it did not fit the traditional thing.

The only thing that I would add in response to your point is remember that this is the outcome of an overall dispute, and it could very well be that those utilities would owe an amount of money anyway in respect of these costs. So that, to an extent, this fee is, in a sense, a substitute for that, and it makes it closer to a user fee in this.

Mr. **Flippo**. I thank the gentleman for his response.

Now, Mr. Garrish, let me explore an area or two with you in regard to the Federal Financing Bank. This legislation would be very unique in that other Government corporations, since 1973, have been required to use the Federal Financing Bank to secure their funding for various and sundry purposes, including the FHA and TVA and others.

The reason that legislation was established in 1973 was because various governmental agencies were going into the bond market, borrowing at various times without much coordination, and causing a great deal of instability in the bond market. In reponse Congress established the Federal Financing Bank so that an orderly process of borrowing on the part of the Federal Government could go forward.

Can I interpret from your support of this legislation that you no longer feel that that concept is valid because, in this bill, you specifically exclude the authority and, in fact, prohibit this organization from participating as all other Government agencies in the FFB.

Mr. **Garrish**. Mr. Flippo, we have no particular position on the advisability of that provision.

Our position is simply that we believe that this Government corporation needs to move to the private sector. We need to put as many attributes of the private sector on this corporation as soon as possible so it can be saleable and that the stock, when it is sold, will have a market.

Now we would like to see more done than is currently done in the legislation. We would have more of a private sector board of directors. We would like to have the requirements of the NRC applied more immediately.

There are a number of things that we would like to do to make it more like a private sector entity. That is not to suggest that the prior law is not appropriate for other circumstances, but we need to move as many of these elements as possible closer to private sector like characteristics.

Mr. FLIPPO. And you are interested, I am sure, in the discipline that the private sector would provide.

I noticed you use a lot of words in here like market price and it's intended to use elements.

But you are really kind of subsidizing it a little bit on the—I noticed you talked about the myth of subsidy.

Do you really feel this is not a subsidy to foreign imported prices?

Mr. GARRISH. No. In fact, I don't see that this is a subsidy in any way of any type. This is basically a business, and what we need to do is to get it to operate like a business.

I don't believe that we are subsidizing this for foreign sales or anything of the type.

Mr. FLIPPO. Well, what you are really doing here is providing some support for U.S. industry that would enable it to sell at a price lower than would normally do that, aren't you?

Mr. GARRISH. Well, in terms of what we are trying to do on the sale of uranium enrichment, we need to be competitive. We think that this corporation will allow us to price competitively, and therefore more competitive decisions can be made.

Mr. FLIPPO. Well, when you guarantee sales, that doesn't sound a whole lot like depending on the free market.

Mr. GARRISH. We are talking about two separate entities.

I was just speaking with regard to the uranium enrichment enterprise as opposed to the uranium industry, which is already in the private sector.

Mr. FLIPPO. Let me just address my real concern. I am not all that opposed to this legislation. I think it needs significant change from its present form. A number of provisions require change. I am not, however, necessarily opposed to the concept or the goals that we are trying to achieve.

But I am unable to determine how—we have many corporations where the President appoints and the Senate confirms, that there is no further oversight, so to speak, of those operations.

In this instance, is the person appointed by the President, would he have a board that would provide oversight? Or where is the private sector guarantees to efficiency and management in the style of corporation that you are recommending?

Mr. GARRISH. If we had our preference, we would have a private sector board appointed, and that that private sector board would appoint the Administrator or the CEO to run the corporation. That is not the way this legislation has in fact been drafted.

It has been drafted to have an Administrator that is appointed by the President and confirmed by the Senate.

I would expect that the oversight responsibilities of the Congress would continue for the next 5 years and beyond, because, at the end of 5 years, this corporation would have to complete a study on the potential sale of the stock of this corporation to the private sector. And at that time, we would expect that the Congress would take these issues up and debate them fully.

Mr. **Flippo**. Well, I thank the gentlemen for their responses. And this Member would like to work toward improving the legislation toward accomplishing some of the goals that you have articulated.

Mr. Brown.

Mr. **Brown**. Thank you, Mr. Chairman.

I was present earlier when we discussed the nature of the Canadian programs that stimulate the uranium industry. I'm not sure I got a very clear idea though from that discussion as to whether or not Canada subsidizes or assists their industry in some way.

If any of the witnesses would care to enlighten us on that, I think that would be helpful.

What does Canada do?

Mr. **Garrish**. I would be prepared to provide a more extensive answer for the record, but let me say briefly, if I could, that there are certain tax incentives available to the industry and certain production incentives. And that those are incentives in the true sense.

Now, whether or not you characterize them as subsidies or not is a legal term of art which I am not prepared today to make a judgment on. But there are certain incentives that the Canadians do provide.

And our discussion earlier was that if there is an unfair trade practice, corrective mechanisms will continue to be available if the industry feels unfairly disadvantaged in the process.

Mr. **Brown**. What is the nature of those payments?

Mr. **Garrish**. I don't have specifics to be able to give you this morning. But if you would like, I would be happy to provide those for the record

Mr. **Brown**. Thank you. I would appreciate that for the record.

[The following was subsequently received:]

8/25/88

ADDITIONAL INFORMATION CONCERNING CANADIAN GOVERNMENT INVOLVEMENT IN CANADA'S URANIUM INDUSTRY

The attachments provide the information that is available to us on this subject. However, in evaluating this information, it is important that the following extracts from Attachment 1, an April 19, 1988, letter by Clayton Yeutter, United States Trade Representative, to Senator Alan Simpson, concerning U.S.-Canada uranium trade be noted.

- "With respect to subsidies in general, it is true that we did not get agreement under the FTA to eliminate existing domestic programs which may assist the uranium industry. This applies to both Canadian and U.S. programs. We will be negotiating over the next five to seven years to try to achieve greater discipline in this area. In the meantime, of course, we retain the right to use of CVD law to respond to subsidized imports from Canada. These remedies and others remain in place under the FTA and can be used by the domestic uranium industry to respond to imports which may threaten its health.

- "It would be inappropriate for the Administration to suggest in the abstract either whether the measures in question would be countervailable under U.S. law or, if so, what the value of the subsidy might be. Only the Department of Commerce can properly make such determinations in the context of a countervailing duty case."

  (This was in reference to the value of some alleged subsidy measures.)

- "I should point out that both countries have engaged in substantial intervention in energy markets over the years, and especially with respect to uranium. You are well aware that we simply closed our domestic market to imported uranium in 1967 and did not phase out the last vestiges of these restrictions until January 1, 1984. In addition, we required Government purchasing of domestic uranium to build the stockpile during the 1960's. I might also mention that the Canadians have noted that many of their programs were instituted to deal with the adverse effects of U.S. trade restrictions on the Canadian uranium industry.

- "Both industries still have some residual benefits of past Government practices, but their effects are small in comparison with the larger impact of market conditions and are continuing to diminish with time. The U.S. industry has opened new mines and reopened some old mines just within the past year. If the industry is concerned about Canadian subsidies, they will have access to U.S. trade remedy laws."

Attachment 1 is a letter from the United States Trade Representative to Senator Simpson dated April 19, 1988. Attachment 2 is a letter from Canadian Ambassador Gotlieb to Senator Simpson dated March 10, 1988, providing questions and answers to "allegations that the Canadian uranium industry is subsidized." Attachment 3 is an analysis of the trade practices of the Canadian uranium industry that was prepared by Arnold and Porter, a Washington, D.C. law firm. Attachment 4 is a Canadian news release announcing the merger and privatization of uranium companies.

4 Attachments

ATTACHMENT 1

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington D.C. 20506

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April 19, 1988

The Honorable Alan K. Simpson
United States Senate
Washington, D.C. 20510

Dear Al:

Thank you for your letter of March 16 regarding the treatment of uranium in the U.S.-Canada Free Trade Agreement (FTA).

As you correctly state, in the FTA provisions applicable to uranium, we have committed not to impose enrichment restrictions on Canadian-origin uranium under Section 161(v) of the Atomic Energy Act and Canada has committed not to discriminate against U.S. uranium processors under their uranium upgrading policy.

With respect to subsidies in general, it is true that we did not get agreement under the FTA to eliminate existing domestic programs which may assist the uranium industry. This applies to both Canadian and U.S. programs. We will be negotiating over the next five to seven years to try to achieve greater discipline in this area. In the meantime, of course, we retain the right to use our CVD law to respond to subsidized imports from Canada. These remedies and others remain in place under the FTA and can be used by the domestic uranium industry to respond to imports which may threaten its health.

With respect to the specific list of measures enclosed with your letter, I would like to comment on the right-hand column, entitled "Information Re: Value of Subsidy." It would be inappropriate for the Administration to suggest in the abstract either whether the measures in question would be countervailable under U.S. law or, if so, what the value of the subsidy might be. Only the Department of Commerce can properly make such determinations in the context of a countervailing duty case.

We have looked very carefully at the list of Canadian practices and have consulted with the Canadian government to see whether the alleged facts are accurate. In general, most of the dollar values appear to be accurate, although their characterization as subsidies may not be. I should point out that both countries have engaged in substantial intervention in energy markets over the years, and especially with respect to uranium. You are well aware that we simply closed our domestic market to imported uranium in 1967 and did not phase out the last vestiges of these restrictions until January 1, 1984. In addition, we required government purchasing of domestic uranium to build the stockpile

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during the 1960's. I might also mention that the Canadians have noted that many of their programs were instituted to deal with the adverse effects of U.S. trade restrictions on the Canadian uranium industry.

In light of this broad extent of government intervention in the uranium sector, I thought it would be appropriate to reformat the information as in the enclosed table. It shows not only the Canadian programs and other practices affecting uranium but also the comparable U.S. programs and practices. This illustrates very well the history of this industry in both countries.

Al, I think what we have here is an opportunity to put this history of heavy government intervention behind us and allow the situation in the United States and Canada to develop on the basis of market forces. Both industries still have some residual benefits of past government practices, but their effects are small in comparison with the larger impact of market conditions and are continuing to diminish with time. The U.S. industry has opened new mines and reopened some old mines just within the past year. If the industry is concerned about Canadian subsidies, they still have access to U.S. trade remedy laws.

Sincerely,

Clayton Yeutter

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Enclosure

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Government Role in the Uranium Industry

Government Role	United States	Canada
Government Ownership	Federal government owns uranium enrichment enterprise.	Federal government owns Eldorado Mining Co. and Saskatchewan government owns Saskatchewan Mining Development Co. (SMDC). NOW GOING PRIVATE FOLLOWIN A MERGER
	Federal, State and local governments own major uranium users, e.g., TVA, SMUD, WPPS, and NY Power Authority.	Ontario owns Ontario Hydro, a major uranium user.
Government Purchase of Uranium	Government purchased $1.1 billion worth of uranium for non-defense applications from U.S. (60%) and other producers from 1940s to 1970. Stockpile was created in 1960s, up to 1970, when purchases were no longer needed for national security purposes.	In response to U.S. cutting off uranium imports, Canadian Government created stockpile, purchasing C$101 million worth of uranium from Canadian producers from 1963 to 1970.
Equity Investments	Not applicable.	Federal purchase (1981) of equity in Eldorado via transfer of uranium stockpile from UCAN to Eldorado and settlement of loan, and equity advances by Sask Fund and Crown-Sask to SMDC. Total transaction - C$550 million.
Loans, Loan Guarantees	*Trade Adjustment Assistance Program.* $385 million in loans and loan guarantees was available, but not used by uranium industry.	Federal loans and loan guarantees valued at C$628.2 million at the end of 1986. Saskatchewan loan guarantees valued at C$137 million. Maximum value of assistance is less than C$15 million per year, i.e., less than 2% decrement in interest rate charged.
		Saskatchewan notes held by U.S. banks, proceeds to SMDC. Amount at the end of 1986 = C$583.3 million. There may be some interest rate benefit (maximum 2%), but not more than C$12 million per year.
Import Restrictions, Domestic Purchase Requirements for Utilities	§161(v) of *Atomic Energy Act* may prohibit enrichment of foreign uranium for domestic use. This section was invoked from 1967 until 1984, with no uranium imported into the U.S. for U.S. utilities for 10 years. A gradual phaseout began in 1977 and ended in 1984. Trade restrictions increased revenues to mining industry by at least $250 million by 1977, with continuing effects today though long-term contracts.	Canadian utilities were previously encouraged to sign long-term contracts for Canadian uranium to satisfy "surplus test" on exports, with continuing effects today through these contracts.

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Government Role in the Uranium Industry

Government Role	United States	Canada
High domestic prices forced by Government policies	Some U.S. firms (3% of purchases) paid as much as $115+ per pound in 1987, because of long-term take-or-pay contracts made when uranium was thought to be in short supply and enrichment restrictions were still in force.	*Surplus Test* encouraged Canadian utilities to enter into long-term (up to 30 year) contracts. Ontario Hydro has some uranium contracts with prices as high as $70+ per pound, signed during same period as U.S. high-price contracts. Recent contracts with Saskatchewan producers are at lower prices.
Resource Evaluation	*Uranium Resource Evaluation Program* spent approximately $300 million between 1974 and 1984 on: • geologic and geophysical studies, • exploratory drilling and airborne reconnaissance in favorable areas, and • R&D on recovering uranium from low-grade or refractory ores such as phosphates, lignites and shales.	Joint Federal-Provincial *Uranium Exploration Program* was funded at a total cost of C$[illegible] million. $18m
Infrastructure	Government assistance for road construction is common in remote areas where roads serve several purposes.	Government assistance for road construction is common in remote areas where roads serve several purposes.
	The Federal program to promote discovery and production of uranium also included construction or improvement of access roads to uranium mines.	Saskatchewan assistance in road building: C$5.3 million (25% of Key Lake and Beauval-Pinehouse roads).
Mill Tailings	Congress passed *Uranium Mill Tailings Control Act* in 1978. Through 1987, Federal program costs were $317.5 million; the States also have contributed.	*National Mill Tailings R&D Program* costs from 1982 to its completion in March 1987, were C$8.5 million.
Adjustment Assistance	*Trade Adjustment Assistance Program:* $153 million for technical assistance has been available (plus loans and loan guarantees) but not used by uranium industry.	*Mobility Incentive Program* government cost was less than $2 million for relocation assistance to unemployed uranium workers.
	Worker Retraining Assistance Program in trade bill. Present estimated cost = $980 million available for workers in U.S. industries who have lost their jobs as a result of import competition or other reasons.	

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Attachment 2

Canadian Embassy Ambassade du Canada

1746 Massachusetts Ave., N.W.
Washington, D.C. 20036-1985

March 10, 1988

The Honourable Alan K. Simpson
Room 261
Senate Dirksen Building
Washington, D.C. 20510

Dear Senator Simpson,

At our meeting on January 26 you referred to allegations that the Canadian uranium industry is subsidized. Subsequent to a discussion between Embassy personnel and Mr. Jim Curtiss and other staffers of the Subcommittee on Nuclear Regulation, we have reviewed these allegations in some detail.

As you are aware, the uranium industry was developed in Canada almost fifty years ago to meet U.S. national security needs. The Canadian Government, with strong U.S. encouragement, invested heavily in uranium production during the 1950's for this purpose. For its part, the U.S. Government constructed uranium enrichment facilities it continues to own and operate.

You will also be aware that the United States restricted the enrichment of foreign uranium for U.S. consumption from 1966 until 1984. This restriction closed the U.S. market and plunged the Canadian industry into a crisis from which it emerged only with the development of offshore markets, the increase in prices in the late 1970's, and the development of new low-cost uranium mines in Saskatchewan.

The Canadian industry is market-driven and profitable for both its public and private owners. More than 80% of U.S. imports of uranium from Canada originate in Saskatchewan mines. In a recent report, the U.S. Bureau of Mines indicated that Saskatchewan ores are 24 times as rich as U.S. ores.

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I appreciate your concern about the health of the U.S. industry. I hope you will agree, however, that Canadian uranium is fairly produced and fairly marketed in the United States. I believe that the attachment hereto provides a convincing rebuttal to allegations of subsidization of the Canadian uranium industry. If circumstances arise in the future that would allow U.S. producers to sustain an allegation that subsidized imports are injuring them, trade remedy procedures will of course be available to them.

The uranium provisions are a key element of the Free Trade Agreement. That agreement promises major benefits for your state. Wyoming exports to Canada totalled $36 million in 1986, compared to $24 million in imports from Canada. Many of Wyoming's exports to Canada, especially chemicals, machinery, iron and steel alloys and scientific and electrical equipment, currently face substantial Canadian tariffs of up to 10% and higher; all of these duties will be removed under the agreement.

I look forward to staying in close touch with you on the Free Trade Agreement and other matters of common concern.

Yours sincerely,

Original Signed by
A. E. GOTLIEB
a signé l'original

Allan Gotlieb
Ambassador

QUESTIONS AND RESPONSES

Question #1

What is the government's share of ownership in the Canadian uranium industry?

Answer

The majority of the Canadian uranium industry is privately owned: 4 out of 6 companies. The two government-owned companies account for less than half of Canadian uranium production.

Eldorado Nuclear (ENL), owned by the federal government, is the only company in Canada with uranium refining and conversion facilities. This is similar to the situation in the U.S.A. where the Department of Energy operates the only facilities for the enrichment of uranium.

ENL and Saskatchewan Mining Development Corporation (owned by the Saskatchewan Government) operate as strictly commercial undertakings. The Canadian and Saskatchewan governments have announced their intention to sell off their respective interests to private investors. The attached news release* dated February 22/88 announces the privatization of ENL and SMDC.

Question #2

What infusions of capital have been made over the years into Eldorado Nuclear and Saskatchewan Mining Development Corporation?

Answer

ELDORADO

The Canadian Government has invested capital in Eldorado on only two occasions. The first was during World War II when $8.2 million was invested to establish the Corporation. At that time, the Government of Canada, through Eldorado, was the only producer and purchaser of Canadian uranium; the company played a major role in supplying the needs of the United States Atomic Energy Commission (USAEC) and the United Kingdom Atomic Energy Authority (UKAEA). Since 1946, however, there has been no cash investment in the company.

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The second investment took place in 1981 when the federal government, as ENL's sole shareholder, increased its equity in the company by $300 million by transferring the government-held general uranium stockpile to ENL. This was a sound commercial decision, since it enabled ENL to finance its expansion program, while enabling the government - the owner of the Corporation - to realize a reasonable return on its uranium stockpile.

SMDC

The Government of Saskatchewan established SMDC with an investment of $250 million in the late 1970's when the uranium market was strong. That investment helped SMDC to develop the Key Lake deposit, which is among the richest and most valuable uranium deposits in the world. SMDC is a profitable company and continues to pay substantial dividends to the Government of Saskatchewan.

Uranium Stockpile

During the 1960's and 70's, at a time when the Canadian exports were embargoed by the U.S.A., the federal government purchased uranium from the Canadian producers to establish a stockpile. It should be noted that the United States maintains government-owned and financed uranium stockpiles.

Question #3

Are not Canadian uranium exports to the U.S. sold at dumped prices, since Canadian utilities pay much higher prices?

Answer

Uranium, like many other commodities such as coal, is frequently traded under long-term fixed-price contracts. These commodities are also traded in the spot market at prevailing prices.

Virtually all of the uranium purchased by Canadian utilities is supplied under long-term contracts with the Ontario and Saskatchewan producers. These contracts were concluded during the high-price, tight-supply period of the 1970s. Since then, prevailing spot market prices have dropped significantly.

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Neither in logic nor in law (as interpreted by the U.S. Department of Commerce) can the difference between prevailing spot market prices and prices under long-term contracts concluded more than 10 years ago be considered as dumping or an unfair trade practice.

Question #4

Does Ontario Hydro make interest-free loans to Canadian uranium producers?

Answer

In 1975, Ontario Hydro made capital advances to Denison Mines of $151 million and to Rio Algom of $158 million. These advances are repayable in the form of credits against future deliveries.

In each case, the cash advances financed the required expansions of uranium production facilities. In the tight supply conditions of the mid 1970's, these advances were sound business decisions for Ontario Hydro because they guaranteed a secure source of supply. These advances were also sound commercially for Denison and Rio Algom, which gained a secure market to replace the U.S. market closed to them since 1966.

Question #5

What is the Canadian Government's policy regarding the sourcing of uranium for Canadian reactors?

Answer

There is no federal or provincial government requirement for Canadian utilities to buy Canadian uranium. Canada's nuclear power utilities will continue to contract for future supplies with producers offering the best combination of low price and long-term security of supply. This includes producers in the United States.

Attachment 3

CANADIAN U PRODUCERS' RESPONSE TO UNFAIR TRADE PRACTICE CLAIMS

The following analysis was prepared by the Washington, D.C. law firm of Arnold & Porter for Saskatchewan Mining Development Corp. (SMDC), Eldorado Nuclear Ltd., Uranerz Exploration & Mining Ltd., and Amok Ltd. According to Arnold & Porter, the analysis is the latest update of information that has previously been presented to congressional committees and the U.S. Office of the Trade Representative.

BACKGROUND:

For the past several years, proponents of measures to revitalize the domestic (U.S.) uranium industry through the imposition of various forms of restrictions on foreign uranium have made a number of allegations about supposed unfair trade practices on the part of the Canadian uranium industry. Supporters of the current attempt to impose penalties on U.S. utilities for the use of foreign uranium—either through legislation currently pending in the Senate or through an amendment to the U.S.-Canada Free Trade Agreement—are now repeating these allegations.

A review of the facts, however, reveals that allegations of unfair trade practices benefitting Canadian uranium producers are without merit. The problems faced by the domestic uranium industry have been caused not by imports, but by reduced demand for uranium, the low grades and cost of mining domestic ore, and excessive inventories. Charges of unfair trading practices against Canadian producers are a mere smokescreen designed to disguise the industry's real problems.

CANADIAN GOVERNMENT OWNERSHIP OF URANIUM PRODUCTION HAS NOT CONFERRED A SUBSIDY:

A frequently heard claim is that government ownership of certain uranium production facilities in Canada confers an unfair subsidy upon Canadian uranium production. This allegation is not supported by the facts. Both Eldorado and SMDC have always operated as strictly commercial undertakings.

Indeed, the governments of Canada and Saskatchewan have stated that there is no public policy reason for them to continue as sole shareholders of Eldorado and SMDC. Accordingly, they have announced their intention to sell off their respective interests. This divestiture would further confirm the commercial nature of Eldorado and SMDC.

In any event, under the U.S. countervailing duty law, 19 U.S.C. section 1671 et seq., government ownership per se does not constitute an unfair subsidy. Rather, government ownership—through equity purchases or otherwise—constitutes a subsidy only if the government investment was inconsistent with commercial considerations. See, e.g., "Certain Steel Products from Belgium," 47 Fed. Reg. 39,304 (1982). If an industry is "equity-worthy" and has an "ability to generate a reasonable rate of return within a reasonable period of time," no subsidy exists. See U.S. Department of Commerce, "Subsidies Appendix 12 (1984)." The soundness of any government investment is to be assessed "as of the time of the investment." Ibid.

Investments by Canadian federal and provincial governments in the Canadian uranium industry have been consistent with commercial considerations. The $250-million investment by the government of Saskatchewan in SMDC, for example, occurred during the late 1970s when the uranium market was strong and its prospects exceptionally bright.

That investment helped SMDC to secure additional interest in and to develop the Key Lake deposit, which is among the richest in the world. Moreover, SMDC has been a profitable company even during recent periods of depressed uranium prices, and is continuing to pay substantial dividends to the government of Saskatchewan.

Similarly, the $300-million investment by the Canadian government in Eldorado in 1981—which took the form of a transfer to Eldorado of the government's uranium stockpile in exchange for stock—was a sound commercial decision. Because of the general depression in the uranium market at the time, the stockpile represented an under-utilized, near-dormant asset.

Eldorado provided a mechanism for the government to realize a reasonable return on the asset, with the value of the asset being invested in several capital projects and in the acquisition of additional mining properties which have provided attractive returns to the company, and thus to its shareholder, the government. In addition, Eldorado is an historically profitable company that holds a substantial stake in some of the most valuable uranium deposits in Canada.

Another allegation by the U.S. industry is that the government of Canada has "forgiven" a $100-million loan to a subsidiary of Eldorado. This allegation is simply incorrect. The loan—which took the form of a transfer of uranium from the government's stockpile rather than cash—was made on commercial terms and has been repaid with interest. Part of the loan was repaid in kind. The remainder, together with accrued interest, was taken into account in determining the consideration to be given to the Canadian government in return for the transfer of the government's stockpile to Eldorado.

LONG-TERM CONTRACTS WITH CANADIAN PROVINCIAL GOVERNMENT-OWNED UTILITIES DO NOT ESTABLISH THE EXISTENCE OF DUMPING OR SUBSIDIES:

Canadian uranium producers sell uranium to Canadian provincial government-owned utilities (principally Ontario Hydro) through long-term contracts in which the prices paid often exceed current spot market prices. The U.S. uranium industry has claimed that this is unfair.

The concern appears to be that because the long-term prices charged in Canada by Canadian uranium producers are above the price for spot market sales by those same producers in the U.S. such U.S. sales constitute "dumping." On other occasions, the U.S. industry has characterized the price differences as "subsidization" on the theory that the government-owned utilities are deliberately paying an inflated price for Canadian uranium. Both charges are without merit.

(Continued on next page)

(Continued from previous page)

Because of the extraordinary price volatility and fear of supply shortages in the uranium market during the late 1970s, Canadian utilities—like their counterparts throughout the world—became concerned about the security of their uranium supplies. To protect against the uncertainty of future price increases and ensure continuity of supply, the Canadian utilities entered into long-term supply contracts.

The prices negotiated in these contracts, though higher than the current spot price of uranium, were reasonable, arm's-length prices at the time of the contract negotiations. The fact that uranium prices have since declined drastically in no way implies that the long-term contract prices negotiated in the past constitute a subsidy. Indeed, many U.S. uranium producers also benefit from long-term contract prices that considerably exceed current spot prices. No one would seriously contend, however, that U.S. producers are subsidized by those long-term contracts.

Moreover, the long-term contracts at issue in Canada are for the most part contracts with Ontario Hydro. The principal beneficiaries of these contracts—Rio Algom and Denison—do not export significant quantities of uranium to the U.S. And, to the extent that Saskatchewan producers sell to Ontario Hydro, it is absurd to suggest that the government of Ontario—through Ontario Hydro—would desire to "subsidize" Saskatchewan producers.

Equally clearly, sales at the current spot price in the U.S. do not constitute "dumping" merely because sales under long-term contracts in Canada are made at higher prices. Under the U.S. antidumping laws, prices under long-term contracts cannot be compared with current spot prices, See "Freeport Minerals Co. v U.S., 590 F. Supp. 1246 (Ct. Int'l Trade 1984), reversed on other grounds, 776 F.2d 1029 (C.A.F.C. 1985). The prices of the long-term contracts were in line with market conditions at the time. And current spot sales to Canadian customers and for export to third countries are at the same prices as contemporaneous spot sales to the U.S.

THE CANADIAN GOVERNMENT DOES NOT ALLOCATE MARKET SHARES:

Another false allegation is that the Canadian government requires Canadian nuclear utilities to buy 100% Canadian uranium. In the past, when uranium was in short supply, Canadian utilities were encouraged by the government to contract forward for a 15-year supply, but there was no requirement as to the source of the uranium. Canadian utilities were free to buy uranium from any country they wished. In any event, even the encouragement of forward contracting has ceased since 1983.

(Continued from page 4)

"It's a much larger industry in Canada and in a much smaller economy," said McGee. "I would think the impact (of the free trade agreement) on the U.S. uranium mining industry would be minimal."

Asked whether there any points on uranium issues—such as the phasing out of section 161(v) proposed earlier by Domenici—on which the Canadians might be willing to negotiate, McGee responded "No. And this applies to the entire agreement. The agreement has been negotiated, concluded, and signed, and we see no possibility for any further amendment."

McGee said that the government of Canada is "certainly expecting that the U.S. government will pass its enabling legislation for the agreement by January 1, 1989." Canadian Prime Minister Brian Mulroney "has stated that Canada will be in a position to implement all provisions of the agreement by then," he added. He said there is "very little question of ratification in Canada," but also that "there's going to be a heated debate in Parliament when the legislation is introduced.

"There is strong opposition in a number of quarters in Canada to the agreement, as there is here in the
U.S....Clearly, if the U.S. does not pass its le
time, there obviously is a problem."

McGee explained that in Canada, "the
does not have to approve the agreement. Unc
tem, the cabinet enters into agreements, and
require parliamentary approval. Where parli
proval is required is for legislative changes t
needed to implement the agreement. And the

number of legislative changes required. That legislation is now being drawn up."

Also signing the Domenici-Baucus letter to Reagan were senators Jeff Bingaman (D-N.M.), Quentin Burdick (D-N.D.), William Cohen (R-Maine), Kent Conrad (D-N.D.), Thomas Daschle (D-S.D.), Dennis DeConcini (D-Ariz.), Wendell Ford (D-Ky.), Jake Garn (R-Utah), Orrin Hatch (R-Utah), Chic Hecht (R-Nev.), John Heinz (R-Pa.), Carl Levin (D-Mich.), John Melcher (D-Mont.), Frank Murkowski (R-Alaska), Larry Pressler (R-S.D.), Harry Reid (D-Nev.), Alan Simpson (R-Wyo.), Steve Symms (R-Idaho), and Malcolm Wallop (R-Wyo.).

—*Eric Lindeman, Washington*

WISCONSIN SEEKS SPOT MARKET MATERIAL TO AVOID USING DOMESTIC U INVENTORY

Wisconsin Electric Power Co. has gone on the spot market looking for 135,000 lb U3O8, according to industry sources. Utility officials said they have not made a
uy yet, and industry sources said that if Wis-
lose a deal, it will be entirely a discretionary
ed on price, timing, and conditions. Delivery
o be "soon," according to one source.
n apparently has enough U.S. material in in-
over its short-term requirements but, like
tilities, would prefer to use foreign uranium
e miners' suit against DOE and the U.S.-

Attachment 3

CANADIAN U PRODUCERS' RESPONSE TO UNFAIR TRADE PRACTICE CLAIMS

The following analysis was prepared by the Washington, D.C. law firm of Arnold & Porter for Saskatchewan Mining Development Corp. (SMDC), Eldorado Nuclear Ltd., Uranerz Exploration & Mining Ltd., and Amok Ltd. According to Arnold & Porter, the analysis is the latest update of information that has previously been presented to congressional committees and the U.S. Office of the Trade Representative.

BACKGROUND:

For the past several years, proponents of measures to revitalize the domestic (U.S.) uranium industry through the imposition of various forms of restrictions on foreign uranium have made a number of allegations about supposed unfair trade practices on the part of the Canadian uranium industry. Supporters of the current attempt to impose penalties on U.S. utilities for the use of foreign uranium—either through legislation currently pending in the Senate or through an amendment to the U.S.-Canada Free Trade Agreement—are now repeating these allegations.

A review of the facts, however, reveals that allegations of unfair trade practices benefitting Canadian uranium producers are without merit. The problems faced by the domestic uranium industry have been caused not by imports, but by reduced demand for uranium, the low grades and cost of mining domestic ore, and excessive inventories. Charges of unfair trading practices against Canadian producers are a mere smokescreen designed to disguise the industry's real problems.

CANADIAN GOVERNMENT OWNERSHIP OF URANIUM PRODUCTION HAS NOT CONFERRED A SUBSIDY:

A frequently heard claim is that government ownership of certain uranium production facilities in Canada confers an unfair subsidy upon Canadian uranium production. This allegation is not supported by the facts. Both Eldorado and SMDC have always operated as strictly commercial undertakings.

Indeed, the governments of Canada and Saskatchewan have stated that there is no public policy reason for them to continue as sole shareholders of Eldorado and SMDC. Accordingly, they have announced their intention to sell off their respective interests. This divestiture would further confirm the commercial nature of Eldorado and SMDC.

In any event, under the U.S. countervailing duty law, 19 U.S.C. section 1671 et seq., government ownership per se does not constitute an unfair subsidy. Rather, government ownership—through equity purchases or otherwise—constitutes a subsidy only if the government investment was inconsistent with commercial considerations. See, e.g., "Certain Steel Products from Belgium," 47 Fed. Reg. 39,304 (1982). If an industry is "equity-worthy" and has an "ability to generate a reasonable rate of return within a reasonable period of time," no subsidy exists. See U.S. Department of Commerce, "Subsidies Appendix 12 (1984)." The soundness of any government investment is to be assessed "as of the time of the investment." Ibid.

Investments by Canadian federal and provincial governments in the Canadian uranium industry have been consistent with commercial considerations. The $250-million investment by the government of Saskatchewan in SMDC, for example, occurred during the late 1970s when the uranium market was strong and its prospects exceptionally bright.

That investment helped SMDC to secure additional interest in and to develop the Key Lake deposit, which is among the richest in the world. Moreover, SMDC has been a profitable company even during recent periods of depressed uranium prices, and is continuing to pay substantial dividends to the government of Saskatchewan.

Similarly, the $300-million investment by the Canadian government in Eldorado in 1981—which took the form of a transfer to Eldorado of the government's uranium stockpile in exchange for stock—was a sound commercial decision. Because of the general depression in the uranium market at the time, the stockpile represented an under-utilized, near-dormant asset.

Eldorado provided a mechanism for the government to realize a reasonable return on the asset, with the value of the asset being invested in several capital projects and in the acquisition of additional mining properties which have provided attractive returns to the company, and thus to its shareholder, the government. In addition, Eldorado is an historically profitable company that holds a substantial stake in some of the most valuable uranium deposits in Canada.

Another allegation by the U.S. industry is that the government of Canada has "forgiven" a $100-million loan to a subsidiary of Eldorado. This allegation is simply incorrect. The loan—which took the form of a transfer of uranium from the government's stockpile rather than cash—was made on commercial terms and has been repaid with interest. Part of the loan was repaid in kind. The remainder, together with accrued interest, was taken into account in determining the consideration to be given to the Canadian government in return for the transfer of the government's stockpile to Eldorado.

LONG-TERM CONTRACTS WITH CANADIAN PROVINCIAL GOVERNMENT-OWNED UTILITIES DO NOT ESTABLISH THE EXISTENCE OF DUMPING OR SUBSIDIES:

Canadian uranium producers sell uranium to Canadian provincial government-owned utilities (principally Ontario Hydro) through long-term contracts in which the prices paid often exceed current spot market prices. The U.S. uranium industry has claimed that this is unfair.

The concern appears to be that because the long-term prices charged in Canada by Canadian uranium producers are above the price for spot market sales by those same producers in the U.S. such U.S. sales constitute "dumping." On other occasions, the U.S. industry has characterized the price differences as "subsidization" on the theory that the government-owned utilities are deliberately paying an inflated price for Canadian uranium. Both charges are without merit.

(Continued on next page)

Attachment 4

Canada Saskatchewan

News Release/Communiqué

1988-8
February 22, 1988

FOR IMMEDIATE RELEASE

Federal and Saskatchewan Governments To Merge Then Privatize Uranium Companies

Saskatoon -- The Canadian and Saskatchewan governments announced today that they have agreed in principle to the merger and privatization of their respective uranium mining companies, Eldorado Nuclear Limited (Eldorado) and the Saskatchewan Mining Development Corporation (SMDC).

The Honourable Barbara McDougall, Federal Minister of State (Privatization) and the Honourable Grant Devine, Premier of Saskatchewan, have signed a letter of intent to form a new Canadian company, to be headquartered in Saskatchewan, through the amalgamation of the assets and operations of Eldorado and SMDC.

"Both governments want individual Canadians to participate directly in the ownership of this world-class uranium mining company," said Mrs. McDougall. "The new company we are creating will be fully privatized through a series of public share offerings. Precisely when all shares in the company are in the hands of private investors will be determined by market conditions. But 100 per cent of the company will move from public to private ownership within seven years. At all times, the control of the new company will be in the hands of Canadians.

"At this time, I want to thank Premier Devine and his government for the co-operation and commitment they demonstrated during these complex negotiations. The merger and privatization of two Crown corporations is a complex matter, as you can imagine, but I am impressed by the goodwill and common purpose that characterized the many meetings and countless discussions that led to today's announcement," added Mrs. McDougall.

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Aussi disponible en français

Mr. **Brown**. I don't know if the other witness has some comments?

Mr. **Trier**. No, sir.

Mr. **Brown**. Let me just make an observation.

One of the things that advocates of free trade, in which I include myself, find troubling is that we as a Government have not done a very good job of understanding how other countries handle trade matters.

It is disquieting to this member that we would not have a thorough and good presentation on this aspect of the problem because it strikes me as one of the fundamental factors in evaluating this whole question. It lends credence to the impression that is widely held that we simply are not very aware of how world markets operate. I must say that Clayton Yeutter has done a superb job in beginning to turn things around. But I think if there is one concern I would have, it is that we need to become far more aware of the world market and make sure our producers have an equal shot at it.

To have a congressional hearing on this subject and not have the information readily at hand strikes me as an unfortunate confirmation of what may be an unfair impression of our Government's lackadaisical attitude in this area.

Mr. Chairman, I yield back.

Mr. **Flippo**. Thank you very much.

According to the list left by the chairman, the Chair recognizes Mr. Frenzel.

Mr. **Frenzel**. I pass.

Mr. **Flippo**. Mr. Shaw.

Mr. **Shaw**. No questions.

Mr. **Flippo**. Gentlemen, thank you very much for your testimony today, for being with us.

Our next panel, representing the Uranium Producers of America, Mr. Gerald Grandey, president, and representing the Edison Electric Institute, Mr. William S. Lee, member of the board.

Gentlemen, thank you very much for coming and being with us today. And we look forward to your testimony.

Please proceed as you deem appropriate.

STATEMENT OF WILLIAM S. LEE, MEMBER OF THE BOARD, EDISON ELECTRIC INSTITUTE, AND CHAIRMAN OF THE BOARD, DUKE POWER CO., CHARLOTTE, N.C., ACCOMPANIED BY LORING E. MILLS, VICE PRESIDENT, NUCLEAR ACTIVITIES, EDISON ELECTRIC INSTITUTE; BOTH ALSO APPEARING ON BEHALF OF THE AMERICAN NUCLEAR ENERGY COUNCIL

Mr. **Lee**. Good morning, Mr. Chairman.

My name is William S. Lee. I am chairman and chief executive officer of Duke Power Co., serving in the Piedmont Carolinas.

Sixty-four percent of our electricity is generated by nuclear, and we are the second largest customer of the Department of Energy for enrichment services in the United States.

I am here representing the Edison Electric Institute and the American Nuclear Energy Council to bring you our views on the Department of Energy's uranium enrichment enterprise and two related subjects having to do with domestic uranium supply and with cleaning up the tailings at the uranium mills.

First of all, with respect to the DOE uranium enrichment enterprise, it has been a reliable supplier of enrichment services; it has provided billions of dollars in export sales. However, the worldwide marketplace in which the enrichment program operates is rapidly changing and becoming increasingly competitive. Since the enrichment program is still structured the way it was in the days when it was a world monopoly, it is ill-equipped to cope with the increasingly competitive marketplace.

It lacks the flexibility to allocate its resources, to adapt quickly to market changes, or to meet the individual needs of its customers.

On March 28 of this year, my company canceled our contract with the Department of Energy for a part of our commitment or uranium enrichment services. We reduced our requirement of the Department of Energy from 100 percent of our needs to 70 percent in the period 1991 to 1995. And we canceled all of our needs from the Department of Energy for years beyond 1995. That is, in the terms of the contract, 1996 through 1998. And we did this because we believe our electricity customers would benefit if we buy our enrichment services on a competitive basis.

Some other DOE customers took similar action, and I expect the trend to continue. Competitive enrichment services are presently available from five overseas countries, and now private companies in both Australia and Canada are expressing interest in starting uranium enrichment businesses in those countries.

Additionally, our studies show that private enrichment facilities built from scratch in the United States can compete favorably with the DOE enrichment services. So, DOE is no longer a monopoly, and the Congress should and must recognize this really before it is too late. Failure to posture the DOE's uranium enrichment enterprise in this increasingly competitive marketplace will result in the loss of domestic jobs, loss of export sales and loss of revenues to the Treasury.

The DOE enrichment enterprise must be free to focus on customer service. Through its history, however, the enrichment program has been called upon to serve roles unrelated to the commercial supply of enrichment services. As an agency of the Government, it has been used as an instrument of foreign policy and, more recently, as a tool in efforts to reduce the Federal deficit.

If the DOE enrichment business is to focus on its customers, and to be free to do so and thereby survive, the Congress should focus on two issues: the governance of the business and price.

First let me address governance. Please bear in mind that for the enrichment business to be successful in the world marketplace, it must be run like a competitive business and not as a part of Government. DOE has made progress, but it is still noncompetitive. Today it has managed far better though than it has governed. I don't know of any enterprise that can compete effectively in the worldwide markets, including the flexibility to adjust to those markets, with the bureaucracy the enrichment enterprise must contend with in the enormous Federal structure.

From time to time, there have been Administration attempts to maximize current revenues without regard to long-term impact. The Congress has at least six or maybe more committees giving oversight to the uranium enrichment enterprise. These committees undergo some change in membership every 2 years. The administration changes every 4 to 8 years. DOE senior management changes more frequently than 4 to 8 years. No matter how well managed the operations of the enrichment business may be, it is impossible to compete with such a governance structure.

The enrichment enterprise, we feel, should have clearly defined long-range goals that don't change every 2 years, and should have the freedom to implement plans geared to achieving these goals.

Next, let me address pricing. DOE must price its services as a business operating in any competitive marketplace. DOE's current base price for enrichment services is $117 per separative work unit, which we call a SWU.

Based upon bids my company has received during the past year, and the proposal we have in hand right now—DOE's prices are the highest in the world. It is possible to contract for enrichment services overseas for less than $100 per SWU. These lower prices could save our consumers as much as $3 to $4 million per reactor, per year, compared to DOE prices.

One of the reasons for this price difference is the issue addressed this morning in this hearing of unrecovered costs which some have claimed are owed to the Treasury by the enterprise.

Some contend the Government's unrecovered costs approach $8 billion. We've heard figures like that this morning. Others, such as our industry, believe the correct amount is zero, but we've accepted $364 million as a part of a comprehensive legislative package.

We think our estimate represents valid accounting principles and equitable allocation of military costs. These enrichment plants were not built for the civil sector; they were built as a military project to serve the military. And our estimates, if the military is allocated their share of costs, show there is no unrecovered costs left.

On the contrary, if there is any unrecovered costs, it should be considered the Government's equity in the marketplace. It is really irrelevant as to whether or not there is any unrecovered cost if the enterprise is not competitive.

But if there is Government investment, unrecovered investment, it should be considered equity. Then a return on the Government's equity will be whatever the business can earn through the proper management of costs and prices as determined in the marketplace.

And such portions of the revenue that are not reinvested in the business to build up the value of the Government's equity can be paid to the Treasury as dividends.

There is nothing new here in this concept. A task force or a business panel formed by three committees of the House 4 years ago recommended that we take steps to change the governance of the enrichment business so that it can compete in the world marketplace.

Not much has happened in the intervening 4 years, and now we have an opportunity with the bills that are before this committee that will embody the necessary elements for changing this governance.

The bills would specifically establish a Government-owned corporation; it would define the goal of the corporation, and would put to rest the unrecovered cost issue.

Related matters of uranium supply and mill tailings are embraced in these bills. Our industry has agreed to the coupling of these two issues with the enrichment issue. We have agreed to help fund the stabilization of uranium mill tailings, and we have agreed to certain elements to strengthen the domestic mining industry. These concessions that we have made are acceptable only in the context of a comprehensive package that contains enrichment program reforms.

As we look at these three issues, uranium supply, clean up of the mill tailings, and the enrichment, they are cost neutral, inasmuch as the package of the three has a neutral effect on the cost of fuel for electricity consumers.

I will be glad to respond to questions, Mr. Chairman, after you have heard the other witnesses.

[The statement of Mr. Mills follows:]

Testimony by
Loring E. Mills
Vice President
Edison Electric Institute
on Behalf of the
Edison Electric Institute
and the
American Nuclear Energy Council
to the
Committee on Ways and Means
U.S. House of Representatives
on
Uranium Enrichment and Supply
August 10, 1988

Mr. Chairman and Committee Members:

I am Loring E. Mills, Vice President, Nuclear Activities of the Edison Electric Institute (EEI). My statement today is on fuel supply for the nation's nuclear reactors and is provided on behalf of EEI and the American Nuclear Energy Council (ANEC). EEI is the national association of investor-owned electric companies. Its members serve approximately 73 percent of all ultimate electricity customers in the nation. ANEC represents over 100 domestic and international organizations having an interest in nuclear energy.

Nuclear energy in 1987 provided nearly 18 percent of the electricity generated in the U.S., and its use is anticipated to grow to about 20 percent within the next few years. One of the advantages of nuclear energy as a source for the safe and reliable generation of electricity is its low fuel cost. This advantage is maintained through a reliable and low cost supplier base for supply of uranium ore, conversion to uranium hexafluoride, enrichment, and fuel fabrication. The two elements of concern to us at this time are domestic uranium supply and uranium enrichment.

Legislation pending before the House, the "Uranium Revitalization, Tailings Reclamation and Enrichment Act of 1988" (H.R. 4489, H.R. 4934 or H.R. 4975), as a comprehensive package, will have a profound impact on the domestic nuclear fuel supply industry. Such legislation is needed now to resolve the conflicts and challenges that industry faces. In the interests of achieving compatibility with the Canada-U.S. Free Trade Agreement, electric utilities support the version presented in H.R. 4975.

Electric utilities view this legislation as serving three interests: (1) retaining export business--primarily of enrichment services, (2) retaining skilled labor jobs in the United States, and (3) containing the cost of producing electricity with nuclear energy. The latter point is essential to assure reasonable electricity costs for the commercial businesses in our nation, particularly in this era of fierce international competition. These three areas, international trade, domestic jobs, and domestic energy costs, are all absolutely vital to the welfare of the United States and its citizens, and all are significantly affected by this legislation.

As written, H.R. 4975 recognizes that the task of returning stability to the supply of nuclear fuel requires that all facets of the problem be addressed. Revitalizing the uranium mining and milling industry, stabilizing mill tailings, and restructuring the enrichment enterprise are all key steps in returning strength and reliability to the entire nuclear fuel supply industry, an industry that relies upon the stability of all its parts to remain strong and competitive internationally. It is clear that addressing the problems in the mining and milling industry without giving similar attention to the enrichment enterprise would be a grave mistake. The lack of a strong enrichment enterprise would be adverse to uranium mining in this country because as utilities shift more and more business to foreign enrichers, they will become less concerned about satisfying more and more uranium demand as well from overseas suppliers. To fix a problem means to fix the whole problem. We therefore commend this subcommittee for recognizing that fact and for holding this hearing.

The matter of addressing all aspects of these bills together is very important to us. Our electricity customers, individuals and businesses all over the country, will be paying for the assistance proposed for the domestic uranium industry. We feel that this is fair to our customers only if this assistance is part of a package that provides offsetting savings. We believe that restructuring the enrichment enterprise will do this. Overall, we believe the combined outcome of this legislation is about cost neutral for our electricity customers.

Most importantly, we must find a fair and effective solution to problems concerning uranium enrichment in the U.S. Domestic nuclear utilities are the major commercial uranium enrichment customers of DOE. Each year the more than 100 utility reactors in the U.S. will consume approximately 10 million Separative Work Units (SWUs) of uranium enrichment services with a value of about $1 billion. The bills before the House provide a reasonable step to breathe vitality into our withering uranium enrichment enterprise.

The DOE uranium enrichment enterprise, our only domestic source for enrichment, faces stiff competition from overseas suppliers that have been very successful in taking business away from DOE. The unnecessary and unfortunate loss of more domestic jobs and export business is likely to continue as electric utilities seek competitive foreign enrichment services. The only way this trend can be reversed is for the uranium enrichment enterprise to be restructured to achieve a more reliable and customer-responsive operation. All of these bills, H.R. 4489, H.R. 4934 and H.R. 4975, provide for a government enrichment corporation that will establish a clear direction and enhance the stability of the domestic enrichment enterprise, thereby protecting domestic jobs and making our enrichment export business more secure. Furthermore, the current legislation provides authority for a government corporation, the United States Enrichment Corporation, to make dividend payments to the U.S. Treasury as a return on government investment in the uranium enrichment facilities.

Restructuring the Federal Enrichment Enterprise

The restructuring of the Federal enrichment enterprise is a keystone of the legislation now before this Subcommittee. It is vital to the success of any actions taken to address the problems facing nuclear fuel supply. This is a fact that has long been recognized by many parties. For example, in 1984, three House subcommittees established the Tri-Committee Business Advisory Panel to review the DOE uranium enrichment enterprise. Several recommendations of that panel have been achieved by actions of DOE. However, the primary recommendation calling for the restructuring of the enterprise has not been achieved, and it requires Congressional action to do so. The chief finding of the panel was:

> The current management of the Office of Uranium Enrichment has made progress in going from a technology-driven to a market-driven mode of operation. However, there is an urgent need for further improvement, and DOE should accelerate the transition.

As a result of this finding, the Panel recommended that:

> Congress and the Secretary of Energy should take steps to establish a private business management structure for the enrichment enterprise. Alternative institutional structures under government ownership should be examined. The proper structure would further the business objective of the enterprise and be compatible with an approach to privatization of enrichment services.

The current enrichment enterprise structure may have been adequate when DOE held a monopoly in providing enrichment services, but in today's competitive international marketplace the enterprise, under its current organization and financial structure, cannot survive. A new organizational structure is essential to give customers the needed assurance of competitive cost and service for the long-term supply of critical enrichment services. The legislation before you provides an important first step, and we urge you and Congress as a whole to take that step.

We believe the contrast between the two options of continuing "business-as-usual" or restructuring the enrichment enterprise now is quite dramatic. Following the "business-as-usual" path will result in the continued loss of market share, loss of more skilled labor jobs, loss of more export business, and loss of a strong future position for the control of this sensitive technology from a non-proliferation standpoint. It will also result in a high cost burden for all taxpayers in maintaining the production of defense-related materials without the economy that commercial production would bring.

Payments to the Treasury

One reason customers have concerns about DOE as an enrichment supplier is the complex issue of "prior unrecovered government costs," that some groups have argued should be considered as a debt of the enrichment enterprise. While the arguments on this are complex, the commercial customers have paid their full share of the past costs and are not legally responsible for any debt. To the extent that this alleged debt is included in DOE's prices, its competitiveness is further eroded.

Although DOE, the Office of Management and Budget (OMB), and many concerned Congressional analysts have agreed that an equity-based approach clarifies and appropriately resolves the "prior unrecovered government costs" issue, it is important to understand the origin of the confusing and widely publicized allegations of the existence of a massive debt on the enrichment accounts. The origin appears to be a non-segregated analysis by the General Accounting Office (GAO) that lumps government domestic and foreign policy actions with defense transfers and commercial sales while ignoring the year-by-year direction of Congress for the management of the enrichment enterprise.

Congress provided specific guidance, year-after-year, for the program to proceed on the basis that revenues are to be used to offset outlays, and that is the way the program has been run by this and previous Administrations. While GAO and others have attempted to describe the history of the enterprise using their own unique ground rules and accounting terms, they have offered more confusion than clarity. Using the GAO approach, a peculiar outcome would occur in that if the commercial customers had paid more for enrichment services over the years, the unrecovered cost value would turn out to be greater. (This is true because unrecovered costs have always been represented by investment, not debt.) Something is wrong with the GAO logic when greater customer payments would result in greater unrecovered costs.

By failing to perform an allocation of costs among the three basic functions served by the enterprise, the GAO reports are misleading and provide the mistaken impression that commercial service customers have not paid fully for enrichment services rendered. This is completely false. A correct review of the program would show that Title III of these bills is a very fair way to proceed. It is not a "bail-out" for electric utilities nor is it a subsidy by taxpayers.

Future Revitalization

While much time has been spent analyzing the history of the enrichment program and the manner in which the program has been run over the past two decades, that history is less important than the need to restructure the enterprise so that it can be a winner in the future. The enrichment enterprise does not need protection from foreign competition. Rather, the need is for removal of the constraints which hobble its competitive ability.

The questions before us today are these: Is Congress willing to provide for a vibrant, healthy commercial enrichment program in the United States, or will it allow yet another important high-technology domestic business to shrink away from domestic suppliers and fall to foreign companies? Is Congress willing to create a profitable, valuable government corporation that will make substantive dividend payments to the Treasury and perhaps someday be sold, earning a high profit for the taxpayers; or will Congress continue the status quo, standing by as opportunity fades away, leaving taxpayers to accept higher costs for defense production?

The market conditions which DOE faces surely have not been exaggerated. Last April, a number of DOE's utility customers officially provided notification of contract termination for the years 1996, 1997 and 1998. This illustrates that present contract holders are very much concerned about the ability of DOE to serve their individual needs and to offer competitive prices.

It has been stated that all of DOE's customers cannot cancel due to the lack of excess world-wide capacity to absorb the transferred demand. While it is uncertain whether or not this is true for 1996-1998, the next wave of cancellations will be for commitments ten years out. Additional lower cost enrichment centrifuge capacity to absorb future DOE losses easily could be on line in time to meet this demand. One analysis has shown that lower cost production of enrichment services may be achieved through the construction of a completely new and independent enrichment plant within the United States using European technology.

Without the changes specified in the legislation before you now, the enterprise will continue to suffer loss of business, and the trends of the past decade will reach their ultimate conclusion: commercial enrichment will be increasingly performed by foreign entities; the taxpayers will be burdened with expensive defense-related enrichment performed by an enterprise that has few commercial customers to share its operating costs; and further revenues to the Treasury from the enrichment enterprise will be reduced significantly. The choice to avoid these conditions is now in the hands of Congress.

Mr. FLIPPO. Mr. Lee, thank you very much for your testimony. I believe we would prefer to have further testimony from the witnesses before we go to questions at this time.

Mr. Grandey.

STATEMENT OF GERALD W. GRANDEY, PRESIDENT, URANIUM PRODUCERS OF AMERICA AND PRESIDENT, ENERGY FUELS NUCLEAR, INC.

Mr. GRANDEY. Mr. Chairman, thank you very much.

I am here representing both a uranium producer, Energy Fuels Nuclear, Inc., out of Denver, Colo., as well as a majority of the uranium miners and millers that are operating in the country.

What I would like to do, with your permission, is have my formal testimony entered into the record, and depart from these remarks with a summary. There seems to be some fundamental confusion as to the nature of the legislation, the nature of the enterprise. And what I would like to do, with your permission, is to respond to some of the questions that have been addressed to the panels this morning, particularly from the mining and milling side.

And if you will bear with me for a moment, as a uranium miner, I will start very, very basically.

We extract out of the earth the uranium in the form of tons of ore, and take that, transport it by truck generally to a mill. And in that mill, we go through a process where we take out the uranium which is commonly referred to as yellow cake. And that is the process, the mining and milling process that our industry is responsible for.

The product then that we sell is the uranium, the U^{308} or the yellow cake. And that is sold and taken through a number of industrial processes and finally delivered to the U.S. Department of Energy Enrichment Corporation. And that is the corporation that has been the subject of a lot of discussion in terms of unrecovered costs, its ability to compete in the world, and some of these things.

The uranium industry in this country, the uranium producing industry, the miners and the millers have in fact gone through a very distressing and difficult period over the last 8 years.

Uranium is a special commodity, and it's been visited and revisited by this Congress for the last 30 some years. Mr. Gibbons asked earlier whether in fact Congress had given this industry a guarantee, and expressed surprise that anything like that would be done.

But you will find, when you look throughout the world, that every major producing company, every country that produces uranium has treated the commodity especially with support, with regulations, with encouragement. And the reason for that is the national security, electrical supply, and defense needs.

So when Congress visited this problem in 1964, it did indeed pass a law that required the Atomic Energy Commission to maintain the viability of the industry by limiting the enrichment of foreign uranium.

Back in 1964, when the Department of Energy or the Atomic Energy Commission was indeed a monopoly, that was tantamount to 100-percent import limitation. And the reason for that guarantee was that Congress was, for the first time, inviting the private sector to invest money into this enterprise. So the private enterprise was very concerned about the unpredictability of the demand because the nuclear power industry was brand new and very uncertain about the degree of foreign resources and degree of foreign competition. And the way Congress addressed that concern was by obligating the Department of Energy to limit enrichment to maintain the viability of the industry.

Private industry responded to that by investing on its own in excess of $3 billion into this industry. We built up the mines and the mills and, over the last 8 or so years, we have written off now in excess of $1 billion of that investment. This industry, as you heard testimony, has gone from 22,000 employees down to 2,000. Mines are beginning to be flooded, and mills are being decommissioned. Almost every month that goes by, a new mill is decommissioned and torn down.

The problem the industry now faces is one that has got a historical context to it. Back in the 1970s, the DOE operated in a fashion, looking out for its own interests. It required the utilities to deliver uranium, whether or not that utility needed the uranium for its commercial power plant.

So here the utilities were out contracting for uranium, both domestic and foreign supplies for deliveries to the DOE. Nuclear plants were being canceled, nuclear plants were being delayed, and a tremendous inventory was built up by the nuclear utilities and by the Department of Energy.

At the same time, other governments were bringing on mines and mills in their own countries to take advantage of what we thought in this country and worldwide would be a tremendous nuclear power program in excess of three to 500 nuclear powerplants operating in the Western World.

The inventory that was created by the foreign investments, by the utility buildup, overhung the market, beginning in 1980, and in 1980 the price, because DOE changed its policies, allowed that inventory to be liquidated and come back into the market, the price began to plummet from $43 a pound down to its present level of about $17 a pound. And this industry responded accordingly. It retrenched, shut down mines, shut down mills. Until today, instead of producing 40 million pounds a year, which we produced in 1980, we now produce 10 to 12 million pounds a year, and that is rapidly going to about 5 million pounds a year unless there is some legislative compromise or some judicial relief as a result of our producers' lawsuit.

The problem is not lack of demand. In this country alone, there is 40 million pounds a year that are consumed by the nuclear utilities. Worldwide, 100 million pounds a year of uranium are consumed, and that is growing at the rate of 2 to 3 percent a year.

The problem is also not inability to compete. We have resources in this country that are as good as resources in other producing countries.

The problem remains the inventory. And we decided to address that problem through an import limitation route until we ran into the objections of the administration on the Canadian Trade Agreement and on trade policy generally. And at that point in time, we were asked by the administration if a procurement program would not work instead? And this industry had to sit back and say will a demand approach, a procurement program work as well as an enrichment limitation or an import limitation?

We did our studies. We polled the producers. And we decided that we needed about 5 years to get through the excess inventory period. Hence, we have a 5-year procurement program that is designed to give the industry the time to work off the excess inventory at which time we fully expect that we will be able to compete with any of the foreign producers.

We didn't ask that we get back to an industry of 40 million pounds a year. What we think this bill will do, and the other approaches to the problem will do, is get back an industry of about 20 million pounds a year.

High cost producers will not come back into this market. You will hear later on today that it will not restore all the employment that we had, the 20,000 employees, and that's correct. We do not intend to bring back the high cost producers, we can't. But those of us that are able to compete will be able to. We expect to have an industry of about 20 million pounds a year.

Tailings are fundamental as well. We need to address the tailings problem, to take care of it, to allow those parties that benefitted to benefit equally and to pay equally. And that is part of this bill, where each of the three parties will share in the tailings cleanup. And that is as important to the recovery of this industry as the other parts of the bill.

I'll stop here and be happy to answer and address any further questions you might have.

[The statement of Mr. Grandey follows:]

TESTIMONY OF GERALD W. GRANDEY
PRESIDENT, URANIUM PRODUCERS OF AMERICA
BEFORE THE
HOUSE COMMITTEE ON WAYS AND MEANS

August 10, 1988

Mr. Chairman and Members of the Subcommittee. My name is Gerald W. Grandey. I am President of Energy Fuels Nuclear, Inc. and President of the Uranium Producers of America (UPA), a trade association of domestic uranium mining and milling companies.

We welcome this opportunity to testify today in support of legislation designed to revitalize the domestic uranium industry, including H.R. 4489, the Uranium Revitalization, Tailings Reclamation and Enrichment Act, which is cosponsored by 50 Members of the House.

I would like to focus today on alternative legislation -- H.R. 4934 and H.R. 4975 -- which embodies a compromise supported by the Administration, the utilities and the uranium producers. The Administration has opposed Title I of H.R. 4489 because it imposes charges for the use of foreign uranium. The compromise provides instead for a short-term uranium procurement program. It also, like H.R. 4489, provides assistance for the reclamation of uranium mill tailings and creates a government enrichment corporation.

UPA supports the compromise program as a means of preserving a viable uranium industry to meet our nation's energy and defense needs. The procurement program will increase demand for domestic uranium over the next five years -- providing a critical window of opportunity for domestic uranium producers to regain market share and continue in business while existing surplus inventories are depleted.

UPA also strongly endorses the creation of a government enrichment corporation to manage the Federal enrichment program on a commercial basis. A vigorous and competitive enrichment program is critical to the future health of the domestic uranium industry.

The negotiations which produced this compromise program were precipitated by the uranium provisions of the pending Free Trade Agreement with Canada, which would eliminate a longstanding protection for the domestic uranium industry.

Almost 25 years ago, Congress recognized the importance of uranium to the national security by enacting section 161(v) of the Atomic Energy Act. This law requires that the enrichment of foreign uranium be restricted in order to preserve a viable uranium industry.

The Secretary of Energy has found the domestic industry to be non-viable for three consecutive years but DOE has declined to fulfill its obligation to restrict the enrichment of foreign uranium. Earlier restrictions on the enrichment of foreign uranium ended in 1983.

Uranium producers have gone to court to compel DOE to act and the Supreme Court has decided that DOE is only excused from imposing restrictions under section 161(v) if they would not achieve the statutory goal of a viable industry. DOE must impose restrictions if doing so would assure a viable industry.

Producers are convinced that restrictions will make the industry viable and we are confident that when the record is fully developed, the District Court will agree and order enrichment limitations to be imposed.

In the meantime, the Administration has negotiated a Free Trade Agreement with Canada which would exempt Canadian uranium from any restrictions imposed under section 161(v). In essence, chapter nine of the FTA allows Canadian origin uranium to be enriched by DOE as if it were U.S. origin uranium. Because Canada produces approximately 33 million pounds of uranium per year and uses only 6 million, the uranium provisions of the FTA will open the U.S. market to a flood of subsidized imports from Canada.

UPA has testified in the past before Committees of the House with respect to the pervasive system of Canadian government ownership, financing and subsidy of its uranium industry. Canada has invested almost three billion dollars in its uranium industry. These investments have been cleverly designed to avoid violating U.S. trade laws, but even the U.S. Trade Representative has acknowledged their existence.

Recognizing that the exemption of Canadian uranium from future section 161(v) restrictions could devastate the U.S. uranium industry, the Administration proposed a five-year $750 million purchase program for domestic uranium as a substitute for Title I of H.R. 4489. The uranium would be acquired from domestic producers on a competitive basis for stockpiling and use in the government's enrichment operations. The purchase program would help restore a viable uranium industry by increasing the demand for domestic uranium by some six million pounds a year over the next five years, a critical period for the industry.

The purchase program would take the place of any restrictions which might be imposed on the enrichment of foreign uranium. Section 161(v) of the Atomic Energy Act, which authorizes such restrictions, would be repealed by the legislation.

The purchases would be made by the Secretary of Energy from a Uranium Revitalization Fund which would also be used to fund the reclamation of active site mill tailings. The Fund would be financed by a $450 million contribution from U.S. Enrichment Corporation revenues, a $300 million contribution from uranium producers and a $1 billion contribution from the licensees of nuclear reactors. One billion dollars would be available from the Fund for the reclamation of mill tailings in accordance with existing regulations.

Mill Tailings Reclamation

The system for funding the reclamation of mill tailings at active mill sites allocates the reclamation costs among those who benefitted from uranium produced at these sites. Most of the existing mill tailings were generated at a time when tailings were not considered to be a hazard and for this reason, the price paid for uranium by the government and commercial utilities failed to include the cost of complying with the stringent retroactive standards now in effect. In fact, more than 90 percent of the tailings at these sites today were produced under contracts signed before Congress acted to regulate mill tailings.

The bill before you today provides for the sharing of tailings reclamation costs at active sites in almost equal shares by the site owners, the nuclear utilities, and the federal government through contributions to the Uranium Revitalization Fund, which will reimburse the owner or licensee for reclamation costs up to a limit of $4.50 per ton.

One-third of the reclamation cost, up to the $4.50 per ton limit at each active site, is to be paid by the owner or licensee of the site. Costs over the $4.50 per ton limit are the sole responsibility of the owner or licensee, as are any costs associated with the reclamation of tailings generated after the effective date of the pending legislation.

Let me emphasize, Mr. Chairman, that the proposed legislation does not change the regulatory system for mill tailings established by Congress in the 1978 Act. The owners of the active mill sites will reclaim these sites in accordance with regulations established by EPA and NRC pursuant to the Act. These regulations are designed to deal with the specific potential health hazards resulting from the production of uranium mill tailings. They include rules necessary to maintain air and water quality at mill tailings sites. They can be modified, if necessary, in the future to assure that radiation health hazards to the public are minimized or eliminated.

The justification and need for sharing the costs of uranium mill tailings reclamation is rooted in the history of the uranium industry.

After World War II, the Atomic Energy Commission undertook to find and develop domestic uranium for our national defense. The AEC created a program to encourage private industry to locate and develop domestic uranium, which led thousands of Americans to become involved in exploration. This effort was very successful in the geologic sense, although less so in economic terms for the producers.

The AEC program also called for the construction of uranium mills to separate the waste rock (or "tailings") from the uranium in the ore being mined. The AEC entered contracts with private companies to construct mills, and these contracts were intended to encourage the development of the industry through assurances to the millers that they would recover all the reasonable costs associated with their operations.

During the AEC program, possible health risks were not considered as a problem either by the industry or by the government, and none of the AEC contracts provided for the cost of tailings reclamation.

By 1970, the AEC's uranium procurement program for defense needs ended. The commercial market was still relatively small.

A number of the mill operators decided to cease operations at the end of the AEC procurement program. These mills are now known as the inactive sites. Other mill operators continued, supplying the developing commercial market. The mills that continued past the demise of the AEC procurement program, and those built since, are known as the active sites. They are called active sites, even though most are no longer processing uranium ore.

When the inactive sites closed, no expensive reclamation was required or undertaken. Mill tailings were not considered a hazard. Those producers which remained open for the commercial market did not anticipate expensive reclamation would be required, and contracts with customers rarely contained cost pass-throughs of the costly reclamation EPA and NRC have now determined is required. These contracts were normally long-term.

In late 1978, Congress enacted the Uranium Mill Tailings Radiation Control Act, finding that the mills and tailings may constitute a hazard to health and environment. EPA was directed to develop environmental standards for the operation of active mills, and the closure and reclamation of both active and inactive sites.

At the time the 1978 Act was passed, it was estimated that reclamation of the active sites would cost between $120 and $180 million. Since the EPA regulations were published in 1983, these cost estimates have risen tenfold.

The Government recognized its responsibility to pay for the reclamation of inactive sites in the 1978 Act.

Many of the active sites regulated by the 1978 Act, like the inactive sites, include a large volume of tailings generated pursuant to Government contracts. There are also, of course, tailings on these active sites produced from later contracts between the millers and others in the private sector -- principally utilities. However, Congress did not devise a satisfactory way to allocate responsibility for the stabilization of the sites with these commingled tailings in the 1978 Act.

Shortly after Congress passed the 1978 Act, the General Accounting Office (GAO) recommended that Congress provide assistance for the reclamation of tailings at active sites generated under Federal contracts. This recommendation was based on several factors, including the Federal Government's role as buyer of the uranium, the fact that possible hazards from tailings were not recognized at the time they were produced, and the fact the Government procurement contracts did not require reclamation of tailings. The GAO concluded that the mill owners had acted in good faith and should not bear subsequent costs of reclamation by themselves.

When Congress enacted the mill tailings legislation, the uranium industry in the United States was expanding robustly. It appeared that the active mills could afford the tailings reclamation requirements under the 1978 Act. The situation has changed drastically since that time.

First, the industry has become severely depressed and officially declared non-viable by DOE. With only three uranium mills currently producing in the United States, a secure supply of uranium for defense and utility programs is clearly threatened.

Secondly, the cost of mill tailings reclamation as required by current EPA and NRC regulations under the 1978 Act will be 10 times the original estimates at the time the Act was passed.

Under current industry conditions, we believe the cost-sharing arrangement which has been negotiated with the utility industry and the Administration is an equitable method of assuring early reclamation of the active sites and helping restore a viable industry. The financial liabilities associated with mill tailings at existing mills must be addressed before these facilities can come back into production under current environmental requirements.

Last fall, in reporting legislation to the Senate to encourage the use of domestic uranium, the Senate Energy Committee reaffirmed that "Congress has considered a viable domestic uranium industry as vital to the U.S. national defense and security." The Committee concluded that: "While dependency on other nations for strategic minerals generally, and for uranium in particular, may bring some short-term economic gain, it also involves long-term economic and energy security risks to the Nation's common defense and security."

The strategic significance of uranium is recognized around the world. In other uranium producing nations, key decisions with respect to uranium are made by governments, not private companies. An example of this is the recent decision of the Australian government to freeze uranium exports to France in protest of France's underground nuclear tests in the South Pacific.

Uranium plays a critical role in meeting both national defense and national energy needs. It powers our nuclear navy and the nuclear power plants that supply almost 20 percent of our electricity requirements. These reactors will burn more than two billion pounds of U_3O_8 in their lifetimes.

Because the pending Free Trade Agreement with Canada will eliminate the last vestige of protection for a struggling industry, Congress must now decide whether the national interest requires a viable uranium industry -- or whether subsidized foreign producers will be allowed to dominate the U.S. market and dictate uranium prices.

Mr. **Flippo**. Thank you very much for your testimony.

Mr. Mills, you are accompanying Mr. Lee. Do you have a separate statement?

Mr. **Mills**. I did submit a statement, Mr. Chairman, for the record and I would like to have that statement put in the record. Mr. Lee is on our board of directors and has spoken for the utility industry.

I would like to add just a couple of comments, if I may.

Mr. **Flippo**. Of course. The gentleman is recognized.

Mr. **Mills**. My comment relates to the debt question and whether there is in fact a debt and one can account for that debt. But, either way the arguments are somewhat theoretical with regard to a debt because, in reality, you simply cannot load up this enrichment enterprise with a debt structure that the market will not support. And one must look at the market that you are working in to determine whether in fact this structure could accommodate that arrangement.

As Mr. Lee indicated, the cost of this service under this enterprise as it now exists are higher than in other areas of the world, and that it would not be able to satisfy the needs of the customer if a large debt is applied.

Much time has been spent by the administration and by Congress and by GAO analyzing the enrichment program's history. Most of that is irrelevant because we are looking at a future market, and the question is what can we do to this program to make it a winner in the future? We believe that the legislation that has been provided here in these three bills, as it relates to the enrichment enterprise, can bring that activity back to a viable arrangement. That it can be a winner.

The two main questions before you at this point are; is Congress willing to provide for a vibrant healthy commercial enrichment program in the United States, or will it let yet another important high technology domestic business shift to foreign companies?

Another question is, is Congress willing to create a profitable viable enrichment enterprise that can provide payments to the Treasury, or will it be allowed to fade away leaving the taxpayers to accept high costs for defense production because it is a shared-cost facility?

And I will close with that. We would recommend that Congress proceed with H.R. 4975 to put these issues behind us. And I will be glad to answer some of the questions.

Mr. **Flippo**. Thank you, Mr. Mills, for your testimony.

Let me ask the panel to give me your views on something.

The Department of Energy projects that this U.S. Enrichment Corporation's commercial sales can grow by more than 20 percent by the end of the century.

I understand that very few commercial reactors will be coming on line in the United States during that period of time. So I am wondering if foreign demand accounts for this projected increase?

Can any of the panel answer that?

Mr. **Lee**. Mr. Flippo, if this bill is not enacted, they can't get any more business, and they will continue to lose business and go under.

If this bill is enacted, it will free them to meet the marketplace. I would expect them to recapture some of the business they have lost.

Mr. FLIPPO. What I am asking you is do you see any projections for large numbers of additional U.S. nuclear reactors to come on line, and would you expect the domestic demand to increase dramatically?

Mr. LEE. I do not expect any more reactors, sir, but I do expect some of the reactors that are in place to have improved operation and, therefore, need more uranium.

For example, the reactors at TVA you referred to.

Mr. MILLS. Excuse me. I would like to add to that question, if I might, Mr. Flippo.

And that has to do with the domestic commitments at this point to the Department of Energy are not the total domestic need. As indicated, they have lost some of the business. And the opportunity to bring that back is what might be achieved with the restructuring.

Mr. FLIPPO. I see.

Mr. Lee, could you help me understand why you consider this a revenue neutral package, considering the fact that the fees are assessed on your ratepayers?

Mr. LEE. We will pay more money to help the domestic uranium industry. We will pay money to help clean up the mill tailings. We will save money by having DOE price their enrichment services in the competitive market, to meet the competitive prices of the marketplace. And the combination of those three is about cost neutral.

Mr. FLIPPO. Okay. So, right now, whose responsibility is the cleanup in the absence of this bill? Isn't it generally——

Mr. LEE. The miners, I suppose.

Mr. FLIPPO [continuing]. The miners or the manufacturers or the processors' responsibility for the cleanup.

Mr. LEE. Yes. And what you have here is a rather strange coalition of the miners, of the utility industry and of the Administration saying that we have hammered out our differences, but we needed it enacted in legislation.

Mr. FLIPPO. What the ratepayer gets then for what he pays, because the fee will increase the ratepayers' costs——

Mr. LEE. The ratepayer won't see any more costs, we don't expect, Mr. Flippo, because of the savings in the enrichment services.

Mr. FLIPPO. I see. So that's his payoff?

Mr. LEE. It's neutral. And he will have a more competitive enrichment enterprise in the United States that will compete not only for our business, but will compete for overseas business in the world marketplace and help export sales.

Mr. FLIPPO. I see.

Mr. Schulze.

Thank you, gentlemen.

Mr. SCHULZE. Thank you, Mr. Chairman.

Gentlemen, we heard testimony earlier that the Canadians were subsidizing their production.

Is there reason why any dumping or countervailing duty petitions have not been filed by the industry?

Mr. **Grandey**. Mr. Schulze, if I might, this industry, when it was created by Congress, had the provisions and the protections of section 161(b) of the Atomic Energy Act. And that particular provision obligated the Atomic Energy Commission, which was the predecessor to the Department of Energy, to maintain a viable U.S. industry.

That is the specific remedy that this industry was given to pursue, when it was faced with the inventory overhang and the foreign subsidized competition that we face. It is this particular provision that, in 1982, this industry took to the Department of Energy and asked them to invoke, because of trade policy concerns, because of concerns about their own competitiveness. The Department of Energy refused to limit the enrichment of foreign uranium.

The producers then instituted a lawsuit in 1984, and we have pursued that lawsuit now through all of the appellate court levels and are back at the district court to demonstrate to the court that the imposition of those enrichment limitations by the Department of Energy will in fact result in a viable domestic industry.

And we expect that hearing to be held sometime in the next 4 or 5 months in which event enrichment limitations will be imposed unless the free trade agreement, which basically repeals 161(v), does away with all of the efforts that this industry has pursued over the last 8 years to restore its viability and to pursue the trade remedy that was given to it in 1964.

Mr. **Schulze**. So I take that answer to say that the industry felt it did not have an AD or CVD case, and that's why it did not file one?

Mr. **Grandey**. Industry looked at filing countervailing duty cases and concluded that the remedy of 161(v) of the Atomic Energy Act was a far better remedy than pursuing AD or CVD remedies.

The reason for that, if I might take a couple of minutes, is that Canada has not been naive in terms of how it supported its uranium industry. It is aware of U.S.-trade laws, it's aware of the definitions of subsidies.

The Canadian uranium industry is comprised largely of two government corporations. Those two government corporations have received massive infusions of capital to bring on mines at a time when we had expectations for rapid growth of nuclear power, tremendously large mines that, in a free market environment, never would have been brought into the marketplace at the time that they were brought in, further aggravating the inventory glut that this industry faces.

Their own nuclear power program in Canada is required to enter into contracts with Canadian producers. They have got to have a 30-year supply arrangement with their supplier. And they pay $60 to $80 a pound for that supply, supporting a very high cost production, when the marketplace price is about $16 a pound.

Those are the kinds of things that the Canadians, as have many other countries, done to support what is a special commodity, and that is uranium, for national security and national defense reasons.

Mr. **Schulze**. The domestic price is $60 a pound——

Mr. **Grandey**. $16, sir.

Mr. **Schulze**. $16?

Mr. Grandey. $16.

Mr. Schulze. Oh, $16. And the market price is $14, is that what you are saying?

Mr. Grandey. Well, the spot market price of uranium is $14 to $16 a pound presently. And it has been around that level since 1980.

In the 1970s, it was as high as $43 a pound.

Mr. Schulze. How about the stockpile? When we have a 20-year supply of uranium in our stockpile, why should we be overly concerned?

Mr. Grandey. The stockpile that is being talked about is one for the defense industry. The commercial stockpile is rapidly being utilized to lower enrichment costs.

So, on the commercial side of the equation, there will not be much of a Government stockpile in a year or two.

Mr. Schulze. I'm confused then. I'm mystified.

I asked what our stockpile was, and a witness said we have a 20-year stockpile.

Mr. Grandey. Not the stockpile of——

Mr. Schulze. Are there stockpiles?

Mr. Grandey. Yes, there are two stockpiles. There's one for the commercial side of the program, and because uranium is very important for the nuclear Navy——

Mr. Schulze. Who owns the stockpiles?

Mr. Grandey. The Department of Energy for the benefit of the Department of Defense, I believe.

Mr. Schulze. Owns one or both?

Mr. Grandey. Both.

Mr. Schulze. Both stockpiles.

Now, can you tell me the size of each stockpile? I didn't know it was this complicated. I thought there was only one. There are two stockpiles?

Mr. Grandey. Yes. And as I understand, the stockpile that was being talked about or discussed this morning, with 20 years of supply basically, that is the defense part of the stockpile, the 77 million pounds that the Department of Energy was discussing.

Mr. Schulze. So that defense is taken care of, and there's 20 years supply for them.

Mr. Grandey. Well, the defense industry is taken care of if you believe that we will no longer require uranium to be supplied by the domestic industry.

Right now, the Canadians will not supply uranium for our defense needs; the Australians will not supply uranium for our defense needs. Some day 20 years from now, we will have to once again look to domestic production and remember that it does not—you can't turn a mine and a mill on in a day.

Now there is a 10-year lead time generally to open up a mine in this country because of environmental permitting and because of the investments that need to be put together. You have to have the infrastructure, and that is what we are losing.

Mr. Schulze. From a practical standpoint, why wouldn't it pay us as a Nation to keep that stockpile, go and buy in other parts of the world, and then, 10 years from now or 15 years from now, reactivate our stockpile. Notice that we would not have gone into that stockpile at that point?

Mr. **Grandey**. First of all, we will be relying on foreign suppliers even with this legislation. Now, basically half of our requirements will still be supplied by foreign suppliers. That will not be affected.

But what is happening now is that the mines that we have invested in are being flooded, the mills are being torn down and decommissioned——

Mr. **Schulze**. Before we get too far afield, now you were talking about the other stockpile. We've got the defense and that's out of the way.

Now, tell me about the other stockpile.

Mr. **Grandey**. The commercial side of the stockpile is being used in the enrichment plant.

Mr. **Schulze**. How large is that stockpile?

Mr. **Grandey**. I'm not sure how large that stockpile is.

Mr. **Schulze**. Six weeks or 16 years?

Mr. **Grandey**. No. It has to be on the order of 40 or 50 million pounds of uranium I would think, one or the other.

Mr. **Mills**. This stockpile in the inventory structure is a complex one in which the one stockpile that is owned by the Federal Government is being allocated, to a large extent, to the defense side as discussed earlier this morning, that has several years, 20 to 30 years, whatever it was they stated, and that a portion of the stockpile is available for use by the enrichment enterprise as overfeeding to lower their cost. That portion is a relatively small quantity which will be consumed within the next few years.

I would like to point out that the utilities provide all of the uranium requirements for the commercial side of the business. They must deliver uranium to the Federal Government for the enrichment services.

And there has been no reduction in the amount of commercial uranium that is needed to satisfy our particular demands.

However, the enrichment enterprise, through their operation, are able to lower their costs and operate more efficiently by using some of this relatively smaller portion of the Federal stockpile.

But that is not a long-term item. There is not a long-term resource there for the commercial entity. Utilities must buy uranium each year and deliver uranium to the Department of Energy each year equivalent to the enrichment services we buy from them.

Mr. **Schulze**. Thank you, gentlemen. Thank you, Mr. Chairman.

Mr. **Flippo**. Thank you.

One final question that I wanted to pose about this legislation, as it's currently drafted. The expenditures would not go through the appropriations process. I don't know if you thought that through or not.

But that would mean, contrary to earlier testimony, that it would not have substantial oversight on the part of the Congress since it would be permanently authorized by this bill.

And I just wonder if that is part of the purpose of the—in your testimony, Mr. Lee, you talked about too much oversight. Do you think that maybe this is too little oversight?

Mr. **Lee**. No, sir, we don't think so. We think that Conrail is an example where a Government corporation was established to meet a purpose and it became successful, and was then privatized. That may happen here. We hope it will.

Mr. Flippo. Well, it just seems to me that that is an unusual way to approach it because I can't find any measures that would guarantee any kind of accountability under those conditions.

Mr. Lee. The accountability, Mr. Chairman, is in the marketplace. If they can compete in the marketplace, they will succeed. If they can't, they will go under.

Mr. Flippo. Well, Mr. Lee, I understand that in terms of your accountability in the marketplace. But as long as you have some subsidies involved in this operation—we've had testimony this morning that foreign producers of uranium subsidize their markets, and that's one of the reasons that ours cannot compete.

If you are going to make ours compete, you must put them in a position where they can compete, and I assume that that means some form of subsidy. Or are you saying that there is no subsidy involved in this operation?

Mr. Lee. Well, that will get back to the issue of unrecovered costs.

Mr. Flippo. Yes.

Mr. Lee. I would say that the Government ownership of the equity in the enterprise will continue under Government ownership. Then, at such time as it demonstrates a value, it could be sold and the proceeds returned to the Treasury.

Mr. Flippo. Well, the gentleman cited Conrail. I find that an interesting example. Conrail is a good example of what you want to do. Apparently you use that as an example of one that didn't have to go through the appropriations process. But I believe it was subject to the appropriations process.

I'm concerned about establishing corporations without adequate accountability. And when you have one set up where the President appoints and the Senate confirms, and then never looks at it again, you don't have to go through an appropriations process, you don't have to go through any review process, then, in my opinion, there is no accountability.

It seems to me that that's an ultimate design for managerial disaster downstream. That was the only point I was trying to make.

Would you care to respond?

Mr. Mills. I would, Mr. Flippo, if I might.

The subsidy that you reference there is for the uranium industry not for the enrichment. It's important to recognize we're talking about two different segments of activity.

The enrichment enterprise would not be receiving a subsidy. It would be established as a corporation. It would have a board of directors. It would work in the marketplace.

Mr. Flippo. With guaranteed sales?

Mr. Mills. No, there are——

Mr. Flippo. Or $750 million, isn't it?

Mr. Mills. No. That $750 million of sales is in the uranium side for a 5-year period.

Mr. Flippo. I thought that's what you were discussing, in the uranium side.

Mr. Mills. On the uranium side, there is a $750 million purchase of uranium. On the enrichment side, there is no guaranteed market.

Mr. Flippo. I see. Well, perhaps you and I could discuss that on an informal basis.

Gentlemen, we do appreciate very much your testimony today. Thank you for being with us.

Our next panel of witnesses, we have from the National Taxpayers Union, Mr. Charles Montange; we have Delmer Uqualla, the chairman of the Havasupai Tribe of Arizona; and we have, from the Atlas Corp., Mr. Edward Farley, Jr.

If I have mispronounced these names, I hope you will bear with me, and you can correctly state the record for our transcriber.

Thank you for being with us, and please proceed as you deem appropriate.

STATEMENT OF CHARLES H. MONTANGE, COUNSEL, NATIONAL TAXPAYERS UNION

Mr. Montange. Thank you, Mr. Chairman. You did mangle my name slightly. It's Charles Montange. I am counsel for the National Taxpayers Union.

To paraphrase an old cliche, "these dogs just don't hunt." They are purportedly here to revitalize the domestic uranium industry. They will not do that. I think Mr. Grandey's very candid statement this morning illustrates that point as well as any. He indicated that the bills are not going to bring back any high cost producers. Read that to mean any of the traditional uranium industry.

I commend to you Mr. Edward Farley's testimony which is in written form before the committee today. Unfortunately he cannot be here. That testimony indicates that one would not expect to see any significant increase in employment or any significant restoration of the traditional uranium mining industry in the United States from the uranium measures in the bills before the committee. To the extent the bills are called Uranium Revitalization Acts, they are misnamed.

Similarly, the bills will not do anything to remedy the very sorry situation that we find in the Federal uranium enrichment program. Indeed, to a large extent, they codify the current disaster which inflicts the enrichment enterprise.

Now, in the brief time available to me this morning, I am not going to be able to pull out and dissect every hand that's in the cookie jar. I am simply going to try to summarize some salient points and deal with a few of the details that the committee seemed interested in, based upon the testimony that has been heard this morning.

Let me begin by recalling to this committee the comments offered by Booz, Allen and Hamilton at the sole Senate hearing on the issues that are currently before us, which hearing was held some 18 months ago. Things have not changed since that time.

Booz-Allen, which was a consultant for Martin Marietta, which is DOE's enrichment contractor, said as follows: DOE's current enrichment program strategy is not viable. Booz-Allen stated that the agency was purporting to build long-term business but not investing to provide for it while, at the same time, "dropping prices." This, the consultant said, "results in a combination of low financial returns," as well as "continued loss of market share" especially in the future.

This is a kind of worst of all possible worlds from the taxpayer's perspective, and it is the taxpayers who essentially own this Federal enrichment program. It means we are losing money now, and we are going to continue to lose money in the future.

The bills before this committee today largely enshrine that world. One does not correct a wrong turn by approving it by statute and ordering full speed ahead. Yet that is what the bills before this committee all do.

Mr. Lee, in his testimony, has already made the major point I tried to make in my written testimony for you today. That was that utility support for the uranium provisions in these bills hinges almost totally upon the enormous subsidy for DOE and its customers that is embodied in title III of the bills dealing with the enrichment program.

In addressing the enormous subsidy, especially given confusion relating to the issue this morning, it's important to go back to this question of "unrecovered costs," or "debt" or whatever the Government, the utilities or the other players on the scene choose to call it.

Mr. Garrish got it a little wrong when he was trying to explain it. The $8.8 billion is what the General Accounting Office, the Department of Energy in the past, and the Office of Management and Budget, have all stated is, in fact, the current obligation of the program under current law.

You see, when the uranium market was privatized in 1964, Congress said the Federal enrichment program must recover all of its costs, all of its costs, direct or indirect. That was from the inception of the program interpreted to include depreciation and imputed interest. Between $1 and $2 billion worth of Federal assets were transferred to this program.

The idea was, the intent was, and the commitment was that this money would be recovered from the civilian customers of the Department of Energy or, at that time, the agency's predecessors. Instead, none of this money was recovered for return to the Treasury. It was all reinvested in further enrichment assets for the benefit of DOE's civilian enrichment customers.

In addition, over the period, $364 million in net appropriations were made to the program. As matters stand, you have a program which has in essence lost the original assets, had a net appropriation to itself, or a net loss, plus has failed to return any money to the bank, even though it was supposed to, and has been living under an obligation to. The National Taxpayers Union is troubled at that because it means that there have been direct and indirect subsidies, again according to the General Accounting Office, of at least $8.8 billion to date.

In addition to the $8.8 billion riding on this little batch of friends, there is the problem of decommissioning costs. I think that from the testimony from Mr. Lee today, you can gather that we have a new enrichment environment out there. There are foreign government competitors on the scene. And Mr. Lee has indicated that his company is threatening to bail out of the Federal enrichment program.

What that means, if all the utilities can in fact do that—a matter that we seriously dispute—is that in 1995 the taxpayers are going to be faced with the decommissioning costs of three gaseous diffusion plants. These three gaseous diffusion plants are variously estimated to cost billions of dollars to decommission. The minimum estimates I have seen, and these are from the Department of Energy, are $1 to $3 billion. I've seen estimates from the nuclear utility industry that put the decommissioning charges at three times that. What this means is that the taxpayer is faced with $8.8 billion in unrecovered costs to date plus approximately an equivalent amount of obligations six to seven years from now.

Now, what do these bills do? The bills repeal the cost recovery requirement. What do they substitute for that? They substitute a complete writeoff of unrecovered costs. What do they say about pricing? The language in section 1508 of these bills is one of the most worthless and muddled messes I've ever seen. I seriously doubt that any business corporation in the country would pursue that kind of stuff as its pricing objective.

In general, as we understand businesses in the United States and in the Western World and, for that matter, the rest of the world, they are supposed to show a profit, they are supposed to profit maximize, they are supposed to maximize the value of their enterprise for their shareholders—in this case us, the taxpayer, the Treasury.

What are these corporations established by these bills—these corporations without a board of directors—what are they supposed to do? We're told they are supposed to look at new technology, new R&D. That's great. We've already lost $8.8 billion doing that when we had a legal requirement to cost recovery. What else are they supposed to do? They're supposed to maximize market share. We understand that is DOE's objective right now, and it has cut its price for that purpose, but it says it's still losing business.

The reason it's losing business is foreign government enrichment concerns are basically supplying the enrichment services to their domestic utilities. These suppliers have a captive market. Their customers are not going to come back to DOE even if the DOE price is zero.

DOE's approach is a useless path to follow.

In sum, we have two basic objections off the mark to title III of these bill.

First, title III repeals cost recovery. It doesn't substitute anything to protect us from the future. And as some old English philosopher said, the future is going to be like the past. The future certainly will be a repeat if you repeal the one protection we have.

The second objection is title III does absolutely nothing to recognize, and to truly protect against, the rather astronomical liabilities that the taxpayers are facing with this enterprise, of which decommissioning costs are but one example.

That is only one of the hands in the cookie jar. The red light is on. I would be happy to address more of the hands but I am obliged to pass for now.

[The statement of Mr. Montange follows:]

Testimony of
Charles H. Montange
on behalf of
National Taxpayers Union

before the
Ways and Means Committee
U.S. House of Representatives

10 August 1988

Mr. Chairman and members of the Committee, my name is Charles H. Montange. I am testifying today on behalf of National Taxpayers Union, for whom I am serving as outside legal counsel with respect to their efforts to restore value to the federal uranium enrichment program and to prevent further subsidization of that program by the U.S. taxpayer. I am also the author of an article on the federal uranium enrichment program which appeared in a recent issue of the Journal of Mineral Law and Policy of the University of Kentucky.[1]

The focus of today's hearing is on uranium issues manifest in two basic pairs of bills: the first pair is S. 2097 and its House counterpart, H.R. 4489. The second pair is H.R. 4934 and H.R. 4975, for which there is no specific Senate counterpart.[2] National Taxpayers Union has already circulated to Members of this Committee a memorandum discussing and opposing the bills.

Focus on H.R. 4934/H.R. 4975. The Administration has indicated that it will veto S.2097/H.R. 4489 because of the restriction penalizing importation of foreign uranium for domestic end-use contained in Title I of those bills. H.R. 4934 and H.R. 4975 are in effect a substitute. The substitute, on which I will concentrate here, would have the U.S. government buy $ 750 million of uranium for the federal stockpile. It would also increase the tax on utilities from about $ 200 million as proposed in S. 2097/H.R. 4489, to $ 1 billion. Most of this tax is to be devoted to assist foreign and domestic uranium companies in paying the costs of cleaning up uranium residues (known as "uranium mill tailings") and decommissioning uranium milling sites.

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[1] The Federal Uranium Enrichment Program and the Criteria and Full Cost Recovery Requirements of Section 161 of the Atomic Energy Act, 2 J. Min. L. & Policy 1-61 (1986-87).

[2] The Senate attempted to place a version of this second pair on the implementing legislation for the U.S. - Canada free-trade compact and on Monday they placed a version on the "Nuclear Regulation Reorganization and Reform Act of 1988," S. 2443. However, the matter was never the subject of a hearing, nor was it encompassed in a specific bill reported by committee.

The great horse trade...at taxpayer expense. Mr. Chairman, it is ordinarily rare indeed for the nuclear utility industry to profess support for an additional billion dollars in costs, especially in the form of tax payments, and especially to give to the uranium companies for devotion to clean-up costs. One's sense of the extraordinary is heightened by the fact that the utilities have previously and repeatedly argued that they have and should have no responsibility for tailings clean-up at private uranium companies except as provided in specific contracts. One naturally wonders why the sudden conversion. The reason is very easy to find, and it is embodied in Title III of the bills before the Committee.

Title III of the bills does the following things:
First, it "writes-off" all but $ 364 million of the $ 9 billion in "unrecovered costs" which the General Accounting Office has repeatedly indicated the federal enrichment program owes the U.S. Treasury and taxpayers. Under section 161v. of the Atomic Energy Act of 1954,[3] which all these bills repeal, the federal enrichment program must recover all its costs, direct and indirect, from its customers.[4] It has failed to do so. The bills ask Congress to respond by calling for a return of only 4 cents on the dollar. $ 300 million of this amount, if it is recovered, will be paid to the uranium industry for tailings reclamation. In essence then, all but $ 64 million of the $ 9 billion in unrecovered costs is wiped out.

Second, besides erasing past unrecovered costs, the bills repeal the legal obligation of full cost recovery for the future. The amorphous language which the bills[5] substitute does not require the new enrichment entity to maximize profits. Instead, the bills permit the new federal enrichment agency to pursue a variety of other goals in preference to profit maximization, including general research and development projects and maximization of market share. Mr. Chairman, these goals are precisely what have caused the federal enrichment program to perform so poorly. DOE has already "written-off" billions in investment in enrichment high technology for naught. The agency's efforts to maximize market share have thus far only resulted billions in lost revenue for the Treasury.[6] The taxpayer has lost his shirt with this program despite the express requirement of section 161v. Rather than redeem the shirt, the bills shred it and repeal restrictions against making off with our shirts in the future.

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[3] 42 U.S.C. § 2201v.

[4] Letter, Gen. Accounting Office to Chairman Dingell, Dec. 27, 1984, at pp. 7-9 and 19-22 ("a write-off for pricing purposes of undepreciated plant and capital equipment, so as to obviate the need for customer payments of related depreciation as part of the fee for enriching services, violates the statutory mandate of subsection 161(v) of the Atomic Energy Act of 1954 ... requiring cost recovery for Energy's uranium enrichment program"); Letter, Gen. Accounting Office to Chairman Markey, Feb. 19, 1986 at p. 5 ("Energy does not have the legal flexibility to exclude unilaterally any government costs from its prices given the full cost recovery pricing requirement").

[5] See section 1508 of proposed bills.

Third, the bills all transfer to the new agency the remaining $ 3 billion in federal enrichment assets, without any mechanism to assure that this money is returned to the Treasury. Moreover, the bills afford no real protection against the taxpayer holding the bag for the estimated one to three billion it will cost to clean up the existing gaseous diffusion plants.

The explanation for industry support for the one billion dollar tax is thus simple. It is cheap in return for the $ 9 billion "write-off" of federal uranium enrichment costs, plus removal of any cost recovery requirement in the future. But in this light, the "tax" is very expensive indeed to the general taxpayer. NTU is compelled to object when the "gift" is tied to so great a general burden.

The need for restructuring the federal enrichment program. Mr. Chairman, the National Taxpayers Union does not dispute the need to restructure the federal uranium enrichment program. The program has run up very substantial "unrecovered costs" and has entered into contracts agreeing to supply enrichment services at prices now way below those prevailing on foreign markets. It has not protected taxpayer interests as required by current law, and it has not operated as a business.

But the federal enrichment program as restructured should be set up to maximize the value of the enterprise for the U.S. Treasury and U.S. taxpayer, and not to continue to pillage it. The bills before the Committee, to use an old metaphor, are further beating an already nearly dead horse. To the extent any value flows back into the program under these bills, it seems to go anywhere but the Treasury.

The uranium issues are interwoven in these bills. Mr. Chairman, National Taxpayers Union is not opposed to having a viable domestic uranium industry. NTU has in fact filed amicus curiae briefs supporting aspects of the domestic uranium industry's lawsuit calling for enforcement of section 161v. of the Atomic Energy Act. But the domestic uranium industry's package as contained in H.R. 4934/4975 is interwoven with provisions dealing with the federal enrichment program which are imprudent and unacceptable, and which give away the store.

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[6] For each $ 1 by which DOE reduces its price, the Treasury loses approximately $ 10 million.

It is difficult to view the uranium provisions in the pending bills in isolation from the uranium enrichment provisions, because they are largely financed by a diversion of revenue from the federal enrichment program. However, viewing them in as much isolation as possible, National Taxpayers Union has the following specific comments:

1. The bills are mis-named. The bills are called "uranium revitalization" bills, but they will not revitalize the industry. The uranium-buy program is of insufficient magnitude and duration, and offers an insufficient price inducement, to put any significant number of uranium miners back to work.[7] It will simply mean extra profits for a few existing companies who are already commercially viable.[8] In addition, if government statistics are to be believed, most of the uranium the government buys under the program may be from private inventories.[9] Moreover, according to the latest DOE statistics available to us, the federal government has about 150 million pounds of uranium already in inventory -- enough to supply U.S. defense needs for at least 30 years.[10] Under these circumstances, a uranium-buy will not restore significant employment or industry viability, nor will it serve any public need. It will only deplete economic U.S. reserves and add to the costs of holding the already large federal inventory. The uranium mill tailings clean-up is designed to reduce exit costs from the industry. A fortiori it

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[7] Testimony of Mr. Edward Farley, Jr., for Atlas Corporation, before the Energy & Power Subcommittee of the House Energy & Commerce Comm., July 28, 1988, at p. 4.

[8] See id.

[9] See id.

[10] The May 1984 Report to Congress by the President entitled "United States Uranium Mining and Milling Industry" indicates that defense needs for uranium "would be a small percentage of utility requirements." P. 12 The U.S. held about 41 million pounds of natural uranium and 116 million pounds of enriched uranium as of the end of 1982. Id. at 38. Assuming U.S. defense needs (chiefly naval reactors) at 3 to 5 million pounds per year, the U.S. has a forward supply of at least 30 years. This does not include additional uranium in the form of "depleted" tails.

will not enhance industry employment.[11]

2. The provisions will pose costs for general taxpayers. Indeed, the most recent version of the "uranium revitalization" bills are more costly to taxpayers than the original S. 2097.[12] The general taxpayers in effect must kick in an estimated $ 450 million for the uranium-buy and clean-up. National Taxpayers Union is also concerned about additional taxpayer liability for remedial action costs due to the apparent exemption the bills afford uranium milling companies from all environmental laws other than the Uranium Mill Tailings Radiation Control Act. While National Taxpayers Union has been, and is, willing to discuss some government assistance in cleaning up so-called "commingled" uranium residues resulting from old federal programs,[13] NTU is opposed to general contributions from federal taxpayers to pay environmental clean-up costs of major foreign and domestic mineral companies. Most of these are large corporations like Exxon and the French-national fuel company, Cogema, which do not require taxpayer assistance.

3. According to the Department of Energy's testimony before the Interior Committee, DOE envisions payment of some of the $ 450 million in taxpayer costs through so-called "overfeeding" of the enrichment plants. "Overfeeding" is a bookkeeping technique whereby federal uranium assets are valued at $ 9 per pound[14]-- a price well below-market -- and are distributed to foreign and domestic utilities in lieu of enrichment services.[15] DOE

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[11] Accord, Testimony of Mr. Farley, p. 5.

[12] The original version (S. 2097) paid approximately $ 300 million in taxpayer assets over to the uranium industry; the more recent versions increase this by at least 50 %. The referenced cost is not offset by "savings" from the billions of dollars in other "write-off's" and charges embodied in all versions of the bills.

[13] See DOE, Plan for Stabilization and Management of Commingled Uranium Mill Tailings (June 30, 1982) (discusses "commingled tailings" and suggests a possible "moral" responsibility by government at "commingled" sites).

[14] This is the effective price per DOE's announcement for this purpose at 49 Fed. Reg. 13413 & 13414 (April 1984); see also GAO, Report to the Chairman, Subcomm. on Energy Cons. and Power, House Comm. on Energy & Commerce, Information on DOE's Costing and Pricing of Uranium Enrichment Services 16 (April 25, 1984).

[15] Natural uranium and enrichment services are to some degree substitutes: a large amount of uranium and a small amount of enrichment service can be combined to provide a given amount

portrays this on its books as a savings, or as a gain, but to the taxpayer, it is nothing more than a below-market transfer of a taxpayer asset. In the vernacular, this is known as "giving away the farm." Here, DOE is evidently intending to distribute 100,000,000 pounds of uranium through "overfeeding."[16] If the market price of uranium is at least $ 16 per pound, as it is currently, this is a loss to the taxpayer of $ 7 per pound times 100,000,000 pounds, or $ 700,000,000. How the agency can claim that this $ 700,000,000 loss somehow counterbalances the $ 750,000,000 buy program and $ 300,000,000 federal contribution for tailings clean-up escapes us. It adds to the taxpayer burden; it does not subtract from it.[17]

An alternative. Mr. Chairman, National Taxpayers Union is pleased to announce that Congressmen Eckart and Miller this Monday introduced a major alternative to these bills. That alternative, which is known as the "Uranium Enrichment Reorganization and Taxpayer Protection Act," or H.R. 5181, strives to put some value into the uranium enrichment program and to protect taxpayer interests. NTU strongly supports this initiative by these two Congressmen.

Conclusion. Mr. Chairman, the proponents of this package

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of enriched uranium, or vice versa. See "Proceedings of the Tri-Committee Business Advisory Panel on Uranium Enrichment," House Serial No. 98-160, at p. 38 (testimony of Mr. Gestson). If the price of uranium is low, then one would use more uranium and less enrichment to produce a given quantity of nuclear fuel; if the price of uranium is high, vice versa. When DOE engages in overfeeding (also known as "split-tails"), it takes uranium from the government stockpile, adds that uranium to uranium supplied by the agency's customer, and employs less enrichment service than the customer purchased, in order to supply the requisite amount of enriched uranium. The net effect is to "use up" natural uranium in the government stockpile by converting it into "depleted tails."

[16] E.g., DOE "Interim Operating Scenarios"; DOE Draft Operating Plan dated Feb. 18, 1986 (use 100 million pounds of stockpile over ten year period).

[17] This kind of shenanigan has been opposed by the uranium industry in the past as unfairly cutting demand for domestic uranium as well. See, e.g., Statement of Edward R. Farley on behalf of the Uranium Producers of America before the Energy & Env. Subcomm. of the House Interior and Insular Affairs Comm., Aug. 14, 1886, at pp.6-7. See also T. Neff, The International Uranium Market at 48 (1984) (recounts past ill effects on uranium demand due to "split tails" policies pursued by DOE's predecessor).

have attempted in some circles to brand opponents, such as the National Taxpayers Union, as at worst "anti-nuclear" and as misguided at best. NTU is not "anti-nuclear." It is merely opposed to forced subsidies by taxpayers which do not accomplish any public purpose and which are not cost-effective for achieving such purposes as they are intended to accomplish. And the record is clear on who is "misguided." DOE officials to their credit have for some time repeatedly and candidly admitted that the federal enrichment program has made serious and costly mistakes.[18] The comments offered on behalf of Booz, Allen & Hamilton at the sole Senate hearing on these issues are also worth recalling. Booz, Allen called DOE's current enrichment program strategy "not viable."[19] Booz, Allen stated that the agency was purporting to build long-term business, but not investing to provide for it, while at the same time "dropping prices." This, the consultants said, results "in a combination of low financial returns" as well as "continued loss of market share" especially in the future.[20] This is a kind of worst of all possible worlds from the taxpayers' perspective. It means we are losing money now, and we will lose money in the future. But the bills before this Committee today largely enshrine that kind of world. One does not correct a wrong turn by approving it by statute and ordering full speed ahead. Yet that is what the bills before this Committee all do.

National Taxpayers Union is eager to see the federal enrichment program restructured so it can truly behave as a business, protecting the interests of its owners--the U.S. taxpayer. These bills do not accomplish this end and their proponents offer no alternative objective under which the bills can be sustained.

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[18] E.g., Statement by Shelby Brewer to "Tri-committee Business Advisory Panel on Uranium Enrichment," Serial No. 98-160 (1984).

[19] Booz, Allen is a consulting firm which studied the Energy Department's uranium enrichment program for Martin Marietta, which operates the enrichment program under a contract with the Department.

[20] Statement of Mitchell S. Diamond (Booz, Allen & Hamilton), before the Energy Res. & Dev. Subcomm. of the Senate Energy Comm., May 4, 1987, at pp. 2 & 3.

Mr. FLIPPO. The statement of Mr. Edward R. Farley, Jr., who was unable to attend, will be inserted in the record at this point.

[The statement of Mr. Farley follows:]

Testimony of Mr. Edward R. Farley, Jr.
on behalf of
Atlas Corporation
before the
Ways & Means Committee
U.S. House of Representatives

August 10, 1988

Uranium, the Repeal of the Uranium Viability Proviso in the U.S. -- Canada Free Trade Compact, and Deficiencies in the Various Uranium "Revitalization" Proposals in S. 2097/H.R. 4489, H.R. 4934 and H.R. 4975

Mr. Chairman and members of the Committee, my name is Edward R. Farley, Jr. I am speaking today on behalf of Atlas Corporation, which has produced uranium in Utah since the inception of uranium production in that state in the early 1950's. Atlas owns a uranium mill in Moab, Utah, and uranium properties in adjacent areas in southeastern Utah and Colorado. I have been involved in the domestic uranium industry for over 34 years, virtually the entire time with Atlas, where I served as chief executive officer, chairman and president for over 23 years. I believe that I am thoroughly familiar with the nuclear fuel industry, with the problems besetting the domestic uranium industry and with what measures are required to restore a viable domestic uranium industry.

I would begin by reiterating the current condition of the domestic uranium industry. That condition is exemplified by the uranium operations of Atlas: deeply depressed. Atlas wants to produce uranium. We feel that we have attractive reserves. However, despite the fact that U.S. and world uranium consumption is greater than ever, and despite the fact that fears concerning the "greenhouse effect" and "acid rain" may require much greater reliance on nuclear fuel and uranium in the future, we currently and for the foreseeable future have no market. Our mill has been on stand-by and has not operated for over four years because of the severely depressed nature of the domestic uranium industry. In addition to the unemployment resulting from this shutdown, and its consequent adverse impact on the local community, Atlas has taken tens of millions of dollars in write-offs. In sum, our industry is in deep trouble. It is not viable. The Administration so admits, and the Secretary of the Department of Energy has repeatedly so determined.

In the past, Congress has recognized the importance of maintaining a viable domestic uranium industry capable of meeting U.S. needs.[1] In section 161v. of the Atomic Energy Act,[2] Congress provided that the Atomic Energy Commission, now the Department of Energy, must adopt policies to assure a viable domestic uranium industry. Such an assurance is important to provide for our Nation's energy security and energy future, as well as for our strategic interests. The Department of Energy has failed to make any real attempt to provide the required assurance.

The relevant portion of section 161v. says that the Department "shall assure the maintenance of a viable domestic uranium industry" by limiting enrichment of foreign source uranium for domestic end use. In its recent decision, the U.S. Supreme Court indicated that the Department of Energy must enforce this provision if limiting enrichment will help the domestic uranium industry.[3] In my judgment, which is based on over 34 years in the industry, limiting enrichment of foreign source uranium for domestic end use would be an effective means to restore a viable domestic uranium industry because it would provide us with a significant market to which to sell our uranium. DOE's claims to the contrary are simply not true.[4]

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[1] In the words of the Joint Committee on Atomic Energy, "[t]he maintenance of a viable domestic uranium mining and milling industry is an essential part of a sound nuclear industry and is also vital to the long-range defense and security interests of the United States." 1964 U.S.Code Cong. & Admin. News 3115.

[2] 42 U.S.C. § 2201v.

[3] Huffman v. Western Nuclear, Sup.Ct. No. 87-165 ("If some amount of restriction will assure a viable domestic industry, there can be no doubt that DOE is required to impose restrictions." Emphasis in original). The uranium producers who were plaintiffs in that case did not argue that enrichment restrictions would help, but only that they must be imposed regardless of whether they would help. The Court remanded the case for further consideration of the question whether enrichment limitations would assist the domestic uranium industry.

[4] DOE claims, for instance, that it would lose business if it limits enrichment and that this business loss would be so great as to render enrichment limitations meaningless. There is no basis for DOE's claims, legally or factually. Legally, DOE can request the Nuclear Regulatory Commission to issue regulations or license conditions barring importation of enriched uranium to the extent such importation jeopardizes DOE or its

In short, the Administration has honored the requirements of section 161v of the Atomic Energy Act only in the breach. It not only has failed repeatedly to take any action sufficient to maintain a viable domestic uranium industry, but also has now negotiated a repeal of the relevant portion of section 161v. in the pending U.S. - Canada free trade compact. As a result, our industry continues in its cataclysmic spiral downward, inundated by a flood of Canadian uranium which companies owned and subsidized by the Canadian federal government and provincial governments are offering in the United States at well below the high prices they charge to buyers in the Canadian home market and other markets.[5]

Clearly something should be done. The question is what. The subjects of this hearing include several proposed pieces of legislation which purportedly would "revitalize" the domestic uranium industry. The three bills are H.R. 4489, 4934 and 4975. None of the three bills is consistent with putting people back to work in the domestic uranium industry or in revitalizing it. Let me repeat this another way: I would be genuinely surprised if any significant number of uranium miners went back to work if these bills were adopted. In my judgment they would not help Atlas produce any uranium, and Atlas in my view is in a better position to sell lower-cost uranium than most of the other major uranium producers in the United States. Thus, although something should be done, these bills are clearly not a satisfactory answer to "revitalize" the domestic uranium producing industry.

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abilities to discharge its duties. Factually, DOE possesses sufficient market power to enable it to effectively implement enrichment limitations. To quote the words of former enrichment head John Longenecker, the agency "now enjoy[s] the largest market share, lowest production cost, and most advanced technology development of any supplier." Letter, J. Longenecker to Secretary Herrington, August 4, 1987.

[5] By way of a summary, Canada owns El Dorado and Saskatchewan owns Saskatchewan Mining Development Corporation (SMDC), both of which in turn own or control most Canadian deposits outside Ontario. Canada and Saskatchewan in recent years have poured more than a half billion in cash subsidies or equivalents into these two companies. The province of Ontario, through the provincially owned nuclear utility Ontario Hydro, has supplied in excess of $ 600 million in cash free advances to Ontario producers, closes its market to U.S. producers, and pays Canadian suppliers in excess of four times the price charged by Canadian suppliers on the U.S. market. El Dorado and SMDC are being merged to produce the largest uranium company in the world, with the ownership resting in Canada and Saskatchewan.

A key problem with all the bills is that they go even further than that terrible clause in the U.S. - Canada free trade compact in repealing section 161v. of the Atomic Energy Act. More specifically, the bills repeal section 161v. across the board; the compact only repeals it as to Canada. By repealing section 161v., the three bills repeal the current federal policy that the viability of the domestic uranium industry must be assured. The substitutes for this assurance which they offer will not lead to a viable industry. Put bluntly, the bills thus do not help, and they instead hurt.

Title I of H.R. 4489, like S. 2097 which passed the Senate, provides a scheme for assessing fees on uranium imports which, after grandfathering, would result in preserving substantially less than 50 per cent of the U.S. market for domestic producers. If our industry is non-viable and has sustained 90 % unemployment with the 60 % market share which the government says we now enjoy, how can we be restored to viability if our market share is allowed to drop further in accordance with H.R. 4489 or S. 2097?

Because the Administration says it will veto any bill containing domestic content provisions even as diluted as Title I of H.R. 4489, the Senate proposed for inclusion in the implementing legislation for the U.S. - Canada free trade compact a $ 750 million dollar program to buy additional domestic uranium for the federal stockpile. This proposal has also appeared in Title I of H.R. 4934 and in Title I of H.R. 4975. The proposal does not specify how much uranium will be purchased or at what price, but I have been told that the intent is to buy about 30 million pounds at a price of about $ 25 per pound. Such a price is above the current spot market price but still below the average cost of production in traditional uranium mining areas. This mechanism would benefit (a) fertilizer producers in Florida and Louisiana who have surplus uranium as a by-product of phosphate operations, (b) those few small companies which produce uranium through underground injection of solvents, and (c) those companies with attractive deposits in northern Arizona. But all these companies can profitably produce uranium without the buy program. The buy program would not restore significant production or employment in any of the traditional mining areas in Utah, New Mexico, Colorado or elsewhere. Statements, hopes and expectations to the contrary are sadly mistaken. Moreover, much if not all the buy could probably be satisfied out of privately held inventories.[6] In short, how does this restore a viable domestic uranium industry? For whose benefit is it? Why is it being done?

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[6] The most recent government figures indicate that U.S. producers alone had almost 25 million pounds in inventory-- almost five-sixths of the projected buy amount. Domestic utilities hold even greater amounts. DOE Energy Information Admin., Domestic Uranium Mining and Milling Industry, 1986 Viability Assessment at p. 12, table 3 (Nov. 23, 1987).

Title II of all three bills provides for a government fund to finance up to $ 4.50 per ton of the costs associated with reclaiming uranium mill tailings at the Nation's various NRC-licensed (or "active") uranium processing sites. The fund is paid in part by fees from nuclear utilities, in part by fees and charges paid by uranium companies, and in part by money -- if any is collected above operating costs -- from the federal uranium enrichment program. The first point to make is that Title II will not itself revitalize the domestic uranium industry. It is devoted to assisting in costs incurred upon cessation of operations. More is required to restore a viable industry. Having said this, I will turn to Title II on its merits. While I have no problem with the general principles underlying the approach embodied in Title II, I do have a problem with many of the details. My chief concerns relate to the timing of payments to be made by the owner of the tailings and to a provision, which the nuclear utility industry insisted upon without any reasonable justification, that owners of mills each contribute an additional half million dollars upfront to the fund if they want the decommissioning of their mills included in the reclamation of the tailings which were produced by the mills. This provision is illogical and unjustified, and, like the large pre-payments for tailings provided in the bill, obligate an already hard-pressed industry to make additional non-productive investments long before reclamation activities are planned to start.

In addition, I am troubled by the fact that a significant part of the money intended for the fund is contingent upon revenues above operating costs coming into the enrichment program as established by the proposed legislation. It is unclear that the enrichment program will achieve such revenues under these bills.

This leads to a final question which I would address: What should be done? The first thing I would like to see is rejection of any language in the implementing legislation for the free-trade compact with Canada which repeals section 161v. of the Atomic Energy Act as applied to that country. Canada heavily subsidizes its domestic uranium industry, preserves its home market for its high cost producers, and in other respects does not afford a level playing field in matters relating to uranium. Our trade negotiators were totally insensitive to these problems when they negotiated the trade compact.[7] We are left to face the very dire consequences.

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[7] Indeed, the persons responsible informed representatives of Atlas that they were unaware of unfair Canadian practices in the uranium industry until after the compact had been negotiated, despite the fact that material bearing on these practices had

My strong recommendation is that Congress not adopt legislation implementing that portion of the free trade compact which contains a repeal of section 161v. But whatever Congress does on the implementing legislation, it is my understanding that there is a very good chance that Canada will reject the free trade compact. The Canadian Liberal Party, which I understand is running neck and neck in the polls with the ruling Conservatives, flatly opposes it. At last report, the Liberals were holding off Canadian parliamentary action on the compact until after the next Canadian election. Thus, I am not willing to throw in the towel on section 161v.

What I would most like to see is enforcement of section 161v., not its repeal. DOE should limit enrichment of foreign source uranium for domestic end-use in accordance with its provisions, thus securing a significant and long-term market for domestic uranium companies and their employees. If DOE does not wish to implement section 161v. in this fashion, it should request the Nuclear Regulatory Commission by regulations or license conditions to bar importation of foreign material to the extent necessary to assure a market for the domestic uranium industry. NRC has testified to Congress that it has authority to respond to such a request and DOE's predecessor said that such action would be taken if means other than enrichment limitations were better suited to assure the viability of the domestic industry.[8]

Mr. Chairman, we face a two-fold problem: a combination of unfair foreign competition, and a utility industry in this country that feels pressured to buy low-cost foreign uranium on the spot market for fear that state public utility commissions will not permit higher prices associated with U.S. material to be passed through to customers. As a result, our energy security is threatened. Until a federal agency acts to address these problems, our industry will remain a fragment of its former self. None of the bills before this Committee deals with this key

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been supplied to the general counsel of the Office of the Trade Representative well before and had been published in Trade Law Modernization Act, Hearings before the Comm. Subcomm. of the House Energy & Comm. Comm., 99th Cong., 1st Sess. at 316-496 (1985).

[8] E.g., Private Ownership of Special Nuclear Materials, Hearings before the Legis. Subcomm. of the Jt. Comm. on Atomic Energy, 88th Cong., 1st Sess. 29-30 (1963); Proposed Modification of Restrictions on Enrichment of Foreign Uranium for Domestic Use, Hearings before the Jt. Comm. on Atomic Energy, 93d Cong., 2d Sess. at 8, 232-33 (1974).

problem.

Mr. Chairman, I am a firm believer in nuclear power. I believe that, as the problems associated with fossil fuels are better understood, it is inevitable that we will increase our reliance on atomic energy. At the very least, we should preserve that option. Allowing our domestic uranium industry to fall apart is a luxury which we cannot afford. Every major nation in the world interested in developing the nuclear power option has for decades striven to preserve and to foster its domestic sources of supply of uranium. The reason is simple: it is extremely risky to invest in nuclear power plants and other fuel cycle facilities without a secure source of nuclear fuel. It is ironic that as this Nation's dependence on nuclear fuel has grown, we are increasingly ignoring the risks associated with insecurity of our basic uranium supply.

I appreciate this opportunity to testify, and I would heartily welcome an opportunity to speak with anyone interested in putting together a package that would truly assist in restoring a viable domestic uranium industry. Thank-you.

Mr. **Flippo**. Thank you very much for your testimony. We appreciate that.

Would you please proceed.

STATEMENT OF DELMER UQUALLA, CHAIRMAN, HAVASUPAI TRIBE OF ARIZONA

Mr. **Uqualla**. Thank you, Mr. Chairman.

I have a short statement I would like to read.

I am Delmer Uqualla, chairman of the Havasupai Tribe. We live at the bottom of the Grand Canyon. We are 500 strong.

We oppose the administration's uranium legislation pending before this committee. We oppose it for the following reasons:

First, the demand enhancement provision would provide a windfall profit of $27 million to a family-owned uranium company to destroy our traditional religion.

Second, it would provide windfall profits to this company and other companies who are endangering our local water supply, and possibly contaminating the water supply of southern California and central Arizona.

Ordinary citizens would have to pay for these windfall profits. The Havasupai people believe that the 640-acre Mat Taav Tiijundva site in the Kaibab National Forest is the abdomen of the mother.

Energy Fuels Nuclear of Denver has permit from the Forest Service to mine uranium at this sacred site. This proposed mine would destroy our religion.

Energy Fuels Nuclear supports the legislation you are considering today. The president of EFN is the president of Uranium Producers of America. UPA supports the administration's proposal. Energy Fuels Nuclear estimates a uranium deposit at Mat Taav Tiijundva would yield enough ore to produce 3 million pounds of uranium concentrate.

The legislation that EFN and UPA support would require the Government to buy 30 million pounds of uranium at a cost of $750 million. The cost for the Government to buy the uranium produced from our sacred site would be $75 million. The current price of uranium concentrate is $16 a pound. The Government will pay at least $25 a pound. This is a $9 a pound bonus or $27 million in windfall profit.

Our religion property right was protected in the Grand Canyon Enlargement Act of 1974, and Congress recently passed Public Law 100–346, which provides civil and criminal penalties for destruction of religious property.

H.R. 4934, H.R. 4975 and H.R. 1315, as amended by the Senate yesterday, would offer EFN a bonus to violate these laws.

Mr. Chairman, we are also concerned about the environmental impact of the proposed legislation. The Havasupai Tribe of Arizona and some environmental groups have long opposed uranium mining near the south rim of the Grand Canyon because of the risk of radioactive contamination of the local water supply.

Mining uranium at our sacred site will add radioactive pollutants to Havasu Creek, which is the Havasupai water supply.

Our fears are heightened by a recent report by the Geological Survey that shows heavy radioactive contamination of the Little Colorado River, which is a tributary of the Colorado. It is our understanding that the water of Little Colorado has now been found unsafe for human consumption.

The USGS hydrologist interviewed by the Arizona Republic, says that radioactive material undoubtedly now is embedded in the Colorado River. It is likely heavy concentrations of radioactive material were flushed into the Colorado and may be lodged in sediments behind Hoover Dam at Lake Meade.

We do not drink water from the Colorado River, but millions do. Colorado River is delivered to Los Angeles, San Diego, Phoenix and other southwestern cities, and towns by means of canals and aqueducts. By 1991, the Colorado River will also be delivered to Tucson by the Central Arizona Project.

Half of the uranium ore processed in the United States is mined in Arizona within a few miles of the Colorado River. Huge quantities of mill tailings already threaten surface and groundwater supplies. The watershed is also a proposed site for nuclear waste disposal. The bills before the committee would encourage new uranium mining on public lands within watershed.

No one knows what the long-term consequences enactment would have on public health. The American public should not be asked to pay until they know the answer.

We propose that the legislation be amended or separate legislation enactment to:

One, prohibit mining at certain Havasupai religious sites in Kaibab National Forest, Ariz., that are the target of a uranium company.

Two, authorize and direct the Environmental Protection Agency to conduct a study on the long-term regional environmental impact of uranium mining and milling within the Colorado River watershed, and report its finding to Congress.

Three, prohibit new uranium mining and milling on Federal lands within the watershed until Congress has an opportunity to review the study.

And, four, require the Secretary of Interior, acting through the U.S. Geological Survey, to begin immediately a long-term water sampling program throughout the Colorado River watershed, and report its findings annually to Congress.

It would be far cheaper to condemn EFN's mine at Mat Taav Tiijundva than to buy the uranium produced from it.

Thank you.

[The statement of Mr. Uqualla follows:]

STATEMENT OF DELMER UQUALLA, CHAIRMAN, HAVASUPAI TRIBE OF ARIZONA REGARDING THE URANIUM REVITALIZATION, TAILINGS RECLAMATION AND ENRICHMENT ACT OF 1988 (H.R.4489, H.R.4934, AND H.R.4975) BEFORE THE COMMITTEE ON WAYS AND MEANS

August 10, 1988

Mr. Chairman, the Havasupai Tribe of Arizona opposes the enactment of measures to impose fees on imported uranium or authorize Government purchase of $750,000,000 of domestic uranium concentrate, as proposed by the sponsors of the bills before you.

We propose, instead, that the legislation be amended, or separate legislation enacted, to --

(1) authorize and direct the U.S. Environmental Protection Agency to conduct a study on the long-term regional environmental impacts of uranium mining and milling on water supplies within the Colorado River watershed and report its findings to Congress;

(2) prohibit new uranium mining and milling on Federal lands within the watershed until Congress has had an opportunity to review the study;

(3) require the Secretary of the Interior, acting through the U.S. Geological Survey, to begin immediately a long-term water sampling program throughout the Colorado River watershed and report the findings annually to Congress; and

(4) transfer to the Tribe, or otherwise protect, certain Havasupai religious sites in the Kaibab National Forest, Arizona, that are the targets of a uranium company.

There is new evidence to indicate that the measures before the Committee not only may have dangerous consequences for the 500 Havasupai people who live at the bottom of the Grand Canyon, but also may increase health hazards for huge populations in southern California and Arizona who depend on the Colorado River for their drinking water.

Two versions of the Uranium Revitalization, Tailings Reclamation and Enrichment Act of 1988, H.R.4934 and H.R.4975, would require the Federal government to purchase $750,000,000 worth of uranium concentrate from domestic producers at prices far above free market prices. Most of the concentrate the Government would be required to buy would be produced after the legislation is enacted. Another version, H.R.4489, would impose import fees. A companion to H.R. 4489 passed the Senate in March. All these measures would have the effect of driving up the price of domestic uranium concentrate from the current price of $16 a pound to $25 a pound or more. The uranium industry and sponsors of the legislation assert that the measure is intended to encourage new uranium mining and processing.

If Congress adopts any of these measures, it will give one domestic uranium producer -- one family -- a bonus of $27,000,000 or more to destroy our religion, violate our property rights, and increase local and possibly regional health hazards.

The Havasupai Tribe of Arizona and some environmental groups have long opposed uranium mining and milling near the South Rim of the Grand Canyon because of the risk of radioactive contamination of water supplies.

Our fears are heightened by a recent report by the Geological Survey that shows heavy concentrations of radioactive contamination of the Little Colorado River, which is a tributary of the Colorado. It is our understanding that the water of the Little Colorado has now been found unsafe for human consumption. According to the July 10 Arizona Republic, a USGS hydrologist states radioactive contamination in the Little Colorado has already entered the Colorado. The contamination of the Little Colorado has occurred because, for two decades, uranium mining companies used the Rio Puerco as an effluent channel for routine dewatering and because of a 1979 spill of radioactive waste water from a United Nuclear Mill tailings pond near Gallup, New Mexico, into the Rio Puerco.

Water samples from the Rio Puerco where it crosses a corner of the Navajo Reservation show radioactive contamination levels between 10 and 100 times higher than the level considered safe by the State of Arizona and the Environmental Protection Agency. State and Federal officials say water that contains more than 15 picocuries of radioactive material per liter is unsafe to drink. All of the samples taken on the Little Colorado exceeded the maximum allowable limits. One reading was 7,001 picocuries and several others were well over 1,000.

The USGS hydrologist interviewed by the Arizona Republic says that radioactive material undoubtedly is now embedded in the Colorado River. It is likely "heavy concentrations" of radioactive material were flushed into the Colorado and may be lodged in sediments behind Hoover Dam at Lake Mead.

Colorado River water is delivered to Los Angeles, San Diego, Phoenix and other Southwestern cities and towns by means of canals and aqueducts. By 1991, Colorado River water will also be delivered to Tucson by the Central Arizona Project.

Radioactive contamination of the Colorado River is difficult to assess because no baseline studies have ever been done. We urge that Congress enact legislation this year to authorize the Secretary of the Interior, acting through the USGS, to begin immediately a long-term water sampling program throughout the watershed and report the findings to Congress annually. Occurrence of heavy metals, which attack the liver and kidneys and are associated with uranium mining, should also be assessed.

Present plans for uranium mining on the South Rim of the Grand Canyon include a proposed mine at Mat Taav Tiijundva (Canyon Mine), a sacred Havasupai Indian site in the Kaibab National Forest, Arizona. The Tribe is seeking to block, in Federal District Court, Phoenix, a U.S. Forest Service permit for the mine on both religious and environmental grounds. The company seeking the permit is Energy Fuels Nuclear, a family-owned Denver firm. EFN is the largest uranium producer in the United States. Last year, two of its mines on Kanab Creek near the Canyon's North Rim, produced 5,000,000 pounds of uranium concentrate, which was worth at least $85,000,000 -- half of all the concentrate produced in the United States.

The Forest Service takes the position that it is prohibited by the 1872 mining law from turning down any requests for mining permits on environmental grounds, however devastating the environmental consequences may appear or prove to be. The Bureau of Land Management takes the same position.

The Tribe believes that Congress should prohibit new uranium exploration, mining, and milling on Federal lands within the Colorado River watershed until the Environmental Protection Agency has made a comprehensive study of the cumulative regional impacts of uranium mining and milling within the watershed and submitted it to appropriate committees of Congress. It further recommends that Congress prohibit the sale or exchange of any of these public lands unless there is an express prohibition against uranium exploration, mining, and milling on the lands which are proposed for sale or exchange.

It is not enough to consider uranium mines on a case-by-case basis. Opponents of the proposed permit had asked the Forest Service to consider regional cumulative impacts before granting EFN a permit. The Forest Service determined that no study of impacts was necessary before it issued EFN a permit to mine the Mat Taav Tiijundva site.

In making its determination, the Forest Service relied on representations to it by the company in a letter dated July 16, 1986, which stated --

> Although we are actively exploring in the Arizona Strip [on the North Rim], you should be aware that we do not presently have any additional proposed mines south of the Grand Canyon nor are we aware of any proposals of other mining companies.

To the contrary, Bureau of Indian Affairs documents from 1985 to the present show that EFN proposes to develop six uranium deposits on the Hualapai Indian Reservation, which is on the Canyon's South Rim. Furthermore, EFN has uranium prospecting agreements to explore for uranium within the 20,000 square mile Navajo Reservation, which straddles the Colorado River, and the 768 square mile Boquillas Ranch, near the South Rim, which the Navajos purchased in 1987. EFN also has a drill-rig located at Wii'i gdwiisa (Red Butte), another sacred Havasupai site in the Kaibab National Forest.

Starting in the 1980's, EFN has completed mining five deposits on the North Rim and is presently mining two more there. It has mineral claims covering 700,000 acres of Arizona land. The company has stated "[Critics] keep painting this picture of the Strip covered with mines and its just not going to happen...It will never be more than a few mines at a time." We find the prospect of "a few mines at a time" alarming, given the lack of a regional study of cumulative impacts.

EFN has a good environmental reputation among Federal officials and in Congress; and former Arizona Governor Meacham gave the company an award for environmental merit.

But we find there is another side to the company. We state in our complaint to the Federal District Court that, in 1986, EFN violated the Clean Water Act by bulldozing and grading our sacred Mat Taav Tiijundva site prior to receipt of a National Pollution Discharge Elimination permit. Subsequently EPA ordered EFN to cease construction activities. EFN notified the Tribe's attorneys it would stop construction activities at the site for five days, but only if the Tribe paid it $19,600 by certified check.

The Havasupai Tribe is not alone in its opposition to EFN. The State of Arizona under Governor Babbitt has shared our concern. In 1986, the State land director closed 65,000 acres of State land near the Havasupai Reservation to mineral exploration because of potential harm to the Havasupai cultural values and water supplies. An EFN affiliate, Energy Fuels Exploration Company, had filed applications to lease two sites in the area for exploration work. The sites are at the head of Havasu Creek, where we get our drinking water.

Fear of EFN activities has prompted citizens of Coconino County, Arizona, to collect enough signatures to place an initiative on the November ballot to prohibit uranium mining in the County.

A recent study by a doctoral candidate at the University of Arizona shows that tracer elements scattered on the ground 12 miles from the Colorado River entered the river within 18 hours owing to the fact that the local geological region is riddled with limestone caves and groundwater occurring in the caves rapidly conveys radioactive materials to the river. The uranium deposits that EFN mines and seeks to mine are located in this same geological region.

EFN is not the only company looking for uranium on the South Rim and elsewhere within the Colorado River watershed. At least one other domestic and two European companies are engaged in exploration near the Grand Canyon.

H.R.4934 and H.R.4975 appear to limit Government purchases from any one company to 1,000,000 pounds a year for five years. Nothing in the bills, however, prevents EFN from selling some of its Grand Canyon uranium interests in Federal land to another company and mining and milling under contract -- thus sharing further in the windfall profits and further endangering the watershed at the taxpayers' expense.

In addition to the environmental issues associated with uranium mining, we are concerned about the huge quantities of uranium mill tailings within the watershed. The pending bills identify 26 mill sites located in seven Western states with 193,200,000 tons of tailings. A vast quantity of the tailings are located within the Colorado River watershed. The mill where EFN processes uranium ore in Blanding, Utah, lies within the watershed; and there are presently 1,900,000 tons of mill tailings there. The mill is jointly owned by EFN and UMETCO, which is owned by Union Carbide. The proposed mine at Mat Taav Tiijundva alone would result in an additional 180,000 tons of mill tailings.

Opponents of EFN's mining activities near the Grand Canyon have expressed concern that the EFN will establish a mill in Arizona, but the company has publicly stated that it will process ore from its North Rim mines and its proposed mine at Mat Taav Tiijundva at its mill at Blanding, Utah. What it has not publicly disclosed is the fact that EFN is considering on-site milling on the South Rim of the Grand Canyon for ore extracted from the Hualapai deposits, since transporting the ore to the EFN mill in Blanding may not be economically feasible at today's spot prices for uranium concentrate. If the Hualapai deposits are typical of deposits in the area, the six deposits would yield 2,700,000 tons of ore and result in tailings close to that amount.

The Tribe notes that both H.R.4934 and H.R. 4975 would use hundreds of millions of taxpayers' money to help the uranium industry reclaim the huge quantities of active mill tailings which are presently endangering water supplies. While we believe that reclamation should move forward rapidly, we are vigorously opposed to a $750,000,000 Government uranium concentrate purchase program that would result in hundreds of millions of tons of new mill tailings, with no guarantee the companies will clean them up. No mention is made in H.R.4934 or H.R.4975 where the Government would stockpile the 30,000,000 pounds of concentrate it would have to purchase.

We are also concerned that the pending bills would weaken the already too meagre environmental protections presently in place with respect to active mill tailings. The measures provide that modest payments to a Federal mill tailings fund which would be established by the legislation would constitute "the sole liability and obligation imposed under Federal law in connection with reclamation, decommissioning and other remedial action at active uranium... sites." This could be interpreted to relieve the uranium processors from Superfund and Clean Air Act requirements and may weaken State jurisdiction over State groundwater protection authority.

We do not know whether or not new uranium mining and milling in the Colorado River watershed will have a detectable impact on the lives of populations who depend on the Colorado River for their drinking water. No one knows. We do know that there is a relatively high incidence of cancer among our tribal population of 500 people. We believe that this may result from naturally occurring uranium leaching into our domestic water supply, Havasu Creek, which is a tributary of the Colorado. We are deeply concerned that new uranium mining will increase our burden and the burden of all those who drink Colorado River water.

Mr. Chairman, for the Havasupai people, the danger EFN poses to our religion is a matter of life and death. Mat Taav Tiijundva is the abdomen of the Mother who gave birth to us and renews our world and us each year. Wii'i gdwissa is the navel of the Mother. We believe mines at either of these sites will destroy us and our world.

Our request for Congressional intervention is an urgent matter. EFN has obtained a Forest Service permit to mine uranium at Mat Taav Tiijundva. The Chief Forester, on June 9, rejected the Tribe's appeal. The Federal District Court in Phoenix on June 17 entered an order continuing the stay issued by the Forest Service otherwise due to expire on June 19. The stay will be continued through a trial or hearing on the merits and expiration of time for appeal of any ruling thereon. The trial or hearing on the merits is scheduled to start on September 21.

Congress has already specifically recognized the importance of protecting Havasupai religious sites, practices, and beliefs. In the Grand Canyon Enlargement Act (P.L.93-620; 73 U.S.C. 218), which added approximately 185,000 acres of Park and other Federal land to the Tribe's reservation, Congress provided that --

> the lands may be used for traditional purposes, including religious purposes and the gathering of, or hunting for, wild or native foods, material for paints and medicines.

Prior to enactment of the Grand Canyon Enlargement Act, the Tribe possessed legal and equitable title to the Forest Service land on which our sites are located. It preserved our rights in the land for religious purposes and hunting and gathering.

The Act further provided that --

> Nothing in...this title shall be construed to prohibit access by any members of the tribe to any sacred or religious places or burial grounds...located on public lands not otherwise covered in...this title.

Surely the Forest Service, by granting EFN a permit to destroy the religious values of the site, violates the express Congressional intent of the Act. If our religion is destroyed, the Havasupais will have no reason to visit the Mat Taav Tiijundva site or any other religious site, whether located on or off the reservation, in the Kaibab National Forest or the Grand Canyon National Park. Our right to practice our religion and gather paints and medicines for ceremonial use would be rendered meaningless.

On June 22, seven Havasupais began a seven-day prayer vigil at the Mat Taav Tiijundva site, but they cut short their religious observances because of unlawful harassment by FBI, Forest Service and Coconino County law enforcement officers. All were armed and the FBI man carried a 16-gauge shotgun. Our people had only a prayer feather tied to a stick.

EFN has expressed a determination to proceed with mining the Mat Taav Tiijundva deposit for strategic company purposes. The company reasons that if the Havasupai succeed in blocking the uranium mine at this site on religious grounds, the Tribe will invent religious objections to block mining at every other Federal site in their aboriginal territory. The fact is the Havasupai do have a number of other sacred sites. Our beliefs, however, are centered not on vast acreages of land, but on discrete tracts of very limited acreage. Most of these sites are within the Havasupai Reservation and the Grand Canyon National Park. A few others are within the Tusayan Ranger District of the Kaibab National Forest and comprise only a small portion of it - 3,480 acres. The

Tribe has identified and seeks protection of these National Forest sites as well. The Tribe does not seek, on its own behalf, to prevent EFN or any other company from mining everywhere in the former Havasupai homeland - only at certain sites that threaten to destroy our religion or contaminate our water supply. We don't drink water from the Colorado River.

The Tribe proposes legislation to condemn whatever property rights in our sacred sites EFN may have acquired under the 1872 mining law (30.U.S.C.22). EFN would be paid the appraised value of their interest. EFN says that our sacred Mat Taav Tiijundva site will yield enough ore to produce 3,000,000 pounds of uranium concentrate. If the Government pays $25 a pound, then it will pay EFN $75,000,000 for destroying our religion and the Havasupai people. This means $9 a pound extra profit — $27,000,000 more profit from just one mine. It would cost the taxpayer far less money to pay EFN for whatever property interest the company has in the Forest Service land at the Mat Taav Tiijundva site and the Wii'i gdwiisa site before it starts mining.

The President on June 24, 1988, signed Public Law 100-346, which imposes criminal and civil penalties for the destruction of religious property. The uranium revitalization bills would reward one company for breaking the law.

Arizona opposition to the revitalization legislation and concern for the special plight of the Havasupai are expressed by the Arizona Daily Star in an editorial dated July 15, 1988. It states in part --

> Congress is the best hope for the tiny tribe to retain its religious integrity. The Havasupai have asked Congress to buy out Energy Fuels mineral claim and solve the problem that way. Congress should act.
>
> Ironically, bills that call for the feds to buy and stockpile uranium could raise the value of Energy Fuels claim by driving up the price of uranium.
>
> It's another reason for Congress to look beyond its misguided efforts to play rich uncle to the uranium industry and think about its poor relations, like taxpayers in general and the Havasupai Indians in particular.

Congress, not the uranium industry, is also the best defense for all those people and animals who rely on the Colorado River watershed for water to drink and grow food.

Mr. **Flippo**. Thank you very much for your testimony today.

Mr. Montange, do you agree with the definition of this fee as a user fee?

Mr. **Montange**. Mr. Flippo, I would say this: It's being paid by the utilities. It would be a user fee if it were devoted to the cleanup of the existing Federal uranium enrichment facilities. That would be a user fee.

If it's being collected by the U.S. Government to hand over to third parties—here to foreign and domestic uranium companies—it's hard for me to construe it to be a fee. That sounds to me like it's a tax, much as Social Security is a tax.

Mr. **Flippo**. Well, gentlemen, I think that some of our members will have some further questions they would like to submit to you in writing. And so we appreciate very much having your testimony today. All of it shall be included in the record.

Thank you very much.

[Whereupon, at 11:59 a.m., the hearing was adjourned.]

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